



भारत का राजपत्र

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सं. 49] नई दिल्ली, दिसम्बर 1—दिसम्बर 7, 2019, शनिवार/अग्रहायण 10—अग्रहायण 16, 1941

No. 49] NEW DELHI, DECEMBER 1—DECEMBER 7, 2019, SATURDAY/AGRAHAYANA 10—AGRAHAYANA—16, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2070.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद् द्वारा, केंद्र सरकार भारत के दूतावास, कुवैत में श्री तुषार टाँक, सहायक अनुभाग अधिकारी को दिनांक 25 नवम्बर 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2019]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

MINISTRY OF EXTERNAL AFFAIRS
(CPV DIVISION)

New Delhi, the 25th November, 2019

S.O. 2070.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby authorizes Shri Tushar Tank, Assistant Section Officer in Embassy of India, Kuwait to perform the Consular services as Assistant Consular Officer with effect from 25 November, 2019.

[No. T-4330/01/2019]

T. AJUNGLA JAMIR, Director (CPV)

विद्युत मंत्रालय

नई दिल्ली, 27 नवम्बर, 2019

का.आ. 2071.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन पावरग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड के अंतर्गत उत्तरी क्षेत्र पारेषण प्रणाली-3 के अधीन 765/400 के.वी. उरई जी.आई.एस. उपकेंद्र, ग्राम-सोमई के समीप (कानपुर-झाँसी एन.एच.-27 पर उरई से 30 कि.मी.), पो.-एट, तहसील-उरई, जिला जालौन, उत्तर प्रदेश-285001, जिसके 80 प्रतिशत कर्मचारीवृद्ध ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

[सं. 11011/9/2017-हिंदी]

अनिरुद्ध कुमार, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 27th November, 2019

S.O. 2071.—In pursuance of Sub Rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notify 765/400 KV Orai GIS substation, Near village-Somai (30k.m. from Orai on Kanpur-Jhansi N.H.-27), P.O. Ait, Tehsil-Orai, Distt. Jalaun, Uttar Pradesh-285001 of Northern Region Transmission System-3 of the Power Grid Corporation of India Ltd. under the administrative control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi.

[No. 11011/9/2017-Hindi]

ANIRUDDHA KUMAR, Jt. Secy.

पैट्रोलियम एवं प्राकृतिक गैस मंत्रालय

नई दिल्ली, 27 नवम्बर, 2019

का.आ. 2072.—केंद्रीय सरकार ने पैट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार के अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसके पश्चात उक्त अधिनियम कहा गया) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पैट्रोलियम एवं गैस मंत्रालय की अधिसूचना सं. का. आ. 772 तारीख 08/05/2019 जो भारत के राजपत्र सं. 20 तारीख 12/05/2019 से 18/05/2019, का० आ० 776 तारीख 08/05/2019 जो भारत के राजपत्र सं. 20 तारीख 12/05/2019 से 18/05/2019 को प्रकाशित की गई थी, द्वारा उस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट भूमि में केरल राज्य में भारत पैट्रोलियम कारपोरेशन लिमिटेड की कोच्चि रिफानरी से सेलम तक द्रवित पैट्रोलियम गैस के परिवहन के लिए कोच्चि कोयम्बटूर सेलम पाइपलाइन परियोजना के माध्यम से कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड द्वारा एक पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 15/06/2019 से 10/07/2019 के बीच उपलब्ध करा दी गई थी; और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन, केंद्रीय सरकार को अपनी रिपोर्ट दे दी है ;

और केंद्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात्, और यह समाधान हो जाने पर की उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः अब केंद्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग के अधिकार का अर्जन किया जाता है;

और केंद्रीय सरकार उक्त अधिनियम कि धारा 6 कि उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन कि तारीख को केंद्रीय सरकार मे निहित होने कि बजाए, सभी विलंगमों से मुक्त, कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड मे निहित होगा।

अनुसूची

राज्य: केरल	जिला: ऐरनाकुलम	तालुक: कुन्नाथुनाडू		
		क्षेत्रफल (अनुमानित)	एरिया	वर्गमीटर
नाम ग्राम	सर्वे नम्बर	हेक्टेयर		
मारमपिल्ल (खण्ड सं. 24)	127 / 6	0	04	61
	127 / 7	0	04	68
	127 / 8	0	05	89
किजाक्कम्बलम (खण्ड सं. 25)	39 / 4	0	13	56
	118 / 9	0	07	34

राज्य: केरल	जिला: ऐरनाकुलम	तालुक: आलुवा		
		क्षेत्रफल (अनुमानित)	एरिया	वर्गमीटर
नाम ग्राम	सर्वे नम्बर	हेक्टेयर		
कीज़माड़ (खण्ड सं. 32)	301 / 5	0	00	75
तेक्कुम्बागम (खण्ड सं. 30)	226 / 6	0	04	85
करुकुटि (खण्ड सं. 2)	366 / 11	0	01	23
मूक्कन्नूर (खण्ड सं. 15)	252 / 8	0	03	72
	295 / 2	0	03	95

राज्य: केरल	जिला: पालाकाड़	तालुक: पालाकाड़		
		क्षेत्रफल (अनुमानित)	एरिया	वर्गमीटर
नाम ग्राम	सर्वे नम्बर	हेक्टेयर		
कन्नाडी-2 (खंड सं 50)	487 / 18	0	02	20
आलापल्ली-1 (खंड सं 40)	169 / 7	0	02	60
	173 / 2	0	04	35

राज्य: केरल

जिला: पालाकाड़

तालुक: आलाथूर

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल (अनुमानित)		
		हेक्टेयर	एरिया	वर्गमीटर
आलाथूर (खंड सं 28)	65 / 2	0	00	40
	65 / 5	0	00	48
आलाथूर (खंड सं 28)	65 / 6	0	00	15
	65 / 11	0	00	43
	65 / 15	0	00	43
	65 / 16	0	00	40
	80 / 9	0	00	41
	192 / 5	0	03	96
	193 / 6	0	01	80
वाडककनचेरी—1 (खंड सं 44)	108 / 2	0	00	70

[फा. सं. आर-12031 / 196 / 2017-ओआर-I / ई-19746]

पी. सोमाकुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 27th November, 2019

S.O. 2072.—Whereas by the Notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. No. 772 dated 08.05.2019 published in Govt. of India Gazette No. 20 dated 12.05.2019 to 18.05.2019 and S.O. No. 776 dated 08.05.2019 published in the Govt. of India Gazette No. 20 dated 12.05.2019 to 18.05.2019 issued under sub section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in the Land) Act, 1962 (Central Act 50 of 1962) (herein after referred to as said Act), the Central Government declared its intention to acquire the Right of User in the land specified in the schedule appended to that notification for the purpose of laying pipeline for the transportation of Liquefied Petroleum Gas from Kochi Refinery of Bharat Petroleum Corporation Limited in the State of Kerala to Salem in the State of Tamilnadu.

AND, Whereas, the copies of the said Gazette Notifications have been made available to the public between 15.06.2019 to 10.07.2019 respectively.

AND, Whereas, the Competent Authority in pursuance of sub section (1) of section 6 of the said Act has submitted his report to the Central Government.

AND, Whereas, the Central Government, after considering the said report, is satisfied that the Right of User in the said land specified in the schedule appended should be acquired.

Now, therefore in exercise of the powers conferred by sub section (1) of the Section 6 of the said Act, the Central Government hereby declared that the Right of User in the Land specified in the schedule appended to this notification are hereby acquired.

AND, further, in exercise of powers conferred by sub section (4) of the section 6 of the said Act, the Central Government hereby directs that the Right of User in the said lands shall, instead of vesting in the Central Government vest free from all encumbrances in the Kochi – Salem Pipeline Private Limited.

SCHEDELE

STATE : KERALA

DISTRICT : ERNAKULAM

TALUK : KUNNATHUNADU

VILLAGE	SURVEY NUMBERS	AREA (APPROX.)		
		HECTARES	ARES	SQ MTRS
MARAMPILLY BLOCK. NO. 24	127/6	0	04	61
	127/7	0	04	68
	127/8	0	05	89
KIZHAKKAMBALAM BLOCK. NO. 25	39/4	0	13	56
	118/9	0	07	34

STATE : KERALA

DISTRICT : ERNAKULAM

TALUK : ALUVA

VILLAGE	SURVEY NUMBERS	AREA (APPROX.)		
		HECTARES	ARES	SQ MTRS

KEEZHMADU
BLOCK. NO.32

301/5

0

00

75

THEKKUMBHAGAM
BLOCK. NO. 30

226/6

0

04

85

KARUKUTTY
BLOCK. NO. 2

366/11

0

01

23

MOOKKANNOOR
BLOCK. NO.15

252/8

0

03

72

295/2

0

03

95

STATE : KERALA

DISTRICT : PALAKKAD

TALUK : PALAKKAD

VILLAGE	SURVEY NUMBERS	AREA (APPROX.)		
		HECTARES	ARES	SQ MTRS
KANNADI - II BLOCK. NO. 50	487/18	0	02	20
ELAPPULLY - II BLOCK. NO. 40	169/7	0	02	60
	173/2	0	04	35

STATE : KERALA		DISTRICT : PALAKKAD		TALUK : ALATHUR	
VILLAGE	SURVEY NUMBERS	AREA (APPROX.)			SQ MTRS
		HECTARES	ARES		
ALATHUR					
BLOCK. NO. 28					
	65/2	0	00	40	
	65/5	0	00	48	
	65/6	0	00	15	
	65/11	0	00	43	
	65/15	0	00	43	
	65/16	0	00	40	
	80/9	0	00	41	
	192/5	0	03	96	
	193/6	0	01	80	
VADAKKANCHERY - I					
BLOCK. NO. 44	108/2	0	00	70	

[F. No. R-12031/196/2017-OR-I/E-19746]

P. SOMAKUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2073.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम च्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 38/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.11.2019 को प्राप्त हुआ था।

[सं. एल-39025 / 01 / 2019-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 25th November, 2019

S.O. 2073.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 25.11.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE NO. 39/2017

Date of Passing Award- 11thOctober, 2019

Between:

Shri Daya Nand,
S/o Shri Narayan Singh,
R/o House No. 638,
Bajitpur Thakran,
Nangal Thakran, Delhi

...Workman

Versus

1. Chief Manager/Branch Manager,
Punjab National Bank,
Near TPDDL Office, Bawana,
Delhi.
2. M/s. Cleared Secured Services Pvt. Ltd.
240, First Floor, Saharanpur Jat,
Near Panchsheel Community Centre,
New Delhi- 110049.

...Managements

Appearances:-

None for the workman (A/R)	For the Workman
None for the management No. 1	For the Management No.1
None for the management No. 2 (A/R)	For the management No. 2

AWARD

This is an application filed by the claimant under the provision of 2A of the ID Act seeking redressal of the grievance.

As per the claim statement filed by the workman He was working for the management no.2 i.e. M/s. Cleared Secured Service Pvt. Ltd. since 09.07.2015 as a security guard at the post office on a monthly salary and his last drawn salary was Rs. 8500/- . Thereafter the management No.2 deployed the workman as a security guard in the office of the management no.1 i.e. Chief Manager PNB, Branch near TPDDL, Bawan Delhi. Thus, the management No.1 was the principal employer of the workman and he was working under the supervision and control of the said principal employer. Though the workman was working for 16Hours a day no over time wage was being paid to him. However the workman continued to work for the management No.2 till 12.10.2016 and during this period he had discharged his duty with outmost satisfaction of the principal employer and the contractor. Suddenly on 12.10.2016 the management no.1 illegally terminated his service and at a time of such termination no notice of termination, notice pay, or termination compensation was paid. Finding no other way on 18.10.2016 the workman served a demand notice on the management demanding a reinstatement with full back wages, earned wages, and continuity of service, including all other consequential benefits. Since, the workman was not obliged in any manner by the management he approach the conciliation office were the conciliation proceeding was initiated. Though the Chief Manager PNB and the representative of the management no.2 participated in the said proceeding, no conciliation could be arrived at. A failure report being served to the claimant he file the present proceeding with a prayer to direct the management No.1 to reinstate him in service with all back wages, earned wages continuity of service and other consequential benefits.

Being noticed both parties appeared. No written statement was filed by management no.1 and by order dated 17.01.2019 management No.1 i.e. PNB was proceeded ex-parte. Management No.2 i.e. M/s Cleared secured services filed written statement stating that the workman was employed by management No.2 on daily wage basis in the month of June 2016. But he left the job voluntarily after two months i.e. in august 2016 without any information and prior permission of management No.2. It has also been stated that management no.2 though issue several notices recalling the workman to join his duty, he neither resumed work nor returned the I-card issue to him. While describing the claim of the workman as baseless and vague, management No.2 pleaded for dismissal of the same. At this stage the workman was called to file rejoinder to the WS, the workman abandoned the proceeding.

For non appearance of the claimant to adduce any oral or documentary evidence rebutting the stand taken by the respondent management this no dispute award is hereby passed. Hence, ordered.

ORDER

The claim petition be and the same is dismissed as the workman has not substantiated the dispute raised by him. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

11th October, 2019

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2074.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय यूनाइटेड बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना (बिहार) के पंचाट (संदर्भ सं. 16 (सी)/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.11.2019 को प्राप्त हुआ था।

[सं. एल-12011/39/2019-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 25th November, 2019

S.O. 2074.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16(C)/2019) of the Industrial Tribunal, PATNA (BIHAR) as shown in the Annexure, in the industrial dispute between the management of United Bank of India, and their workmen, received by the Central Government on 25.11.2019.

[No. L-12011/39/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No. 16 (C) of 2019

Between the management of (1) General Manager (HR), United Bank of India, Head Office, 11, Hemant Basu Sarani, Kolkata-700001 (2) The Chief Regional Manager, United Bank of India, Regional Office, Abhay Bhawan, 2nd Floor, Fraser Road, Patna (Bihar)-800001 And Their workman Sri Bhagirath Singh, Sub Staff, Patna Branch, represented through Regional Secretary, United Bank of India Employees Union C/O Rajendrapath Branch, P. K. Bhattacharya Road, Patna (Bihar)-800001.

For the management : Sri Ved Prakash, SPE No.- 34316, Manager (Law).

For the Workman : Sri Devendra Kumar Singh, Regional Secretary, United Bank of India Employees Union, Bihar & Jharkhand State Committee.

Present:- Vishweshwar Nath Mishra Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dated- 23rd October, 2019

By the adjudication order no.-L-12011/39/2019-IR(B-II) dated- 20.09.2019 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of section-10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as “the Act”), the following dispute between the management of (1) General Manager (HR), United Bank of India, Head Office, 11, Hemant Basu Sarani, Kolkata-700001 (2) The Chief Regional Manager, United Bank of India, Regional Office, Abhay Bhawan, 2nd Floor, Fraser Road, Patna (Bihar)-800001 and their workman Sri Bhagirath Singh, Sub Staff, Patna Branch, represented through Regional

Secretary, United Bank of India Employees Union C/O Rajendrapath Branch, P. K. Bhattacharya Road, Patna (Bihar)-800001. for adjudication to this tribunal:-

SCHEDULE

“Whether the claim of United Bank of India Employees’ Union, Patna regarding discrimination in transferring Sh. Bhagirath Singh, Sub Staff, Patna Branch who happens to be treasurer of the Union and a protected workman from Patna Branch to Mafurganj Branch is legal & justified? If yes, what relief the workman is entitled to?”

2. After receiving the aforesaid reference the present reference case was registered and by order dt- 27.09.2019 notices were issued to both the parties, pursuant to which both the parties appeared and the workman Sri Bhagirath Singh appeared through his Regional Secretary Sri Devendra Kumar Singh. The management also authorized one Sri Ved Prakash, Manager (Law) to represent the case before this tribunal.

3. In this reference on 09.10.2019 a petition was filed on behalf of the workman praying therein to close the dispute as the claim of the workman stands resolved and the matter settled out side the court.

4. The workman Sri Bhagirath Singh appeared before this tribunal on 16.10.2019 and deposed before this tribunal. In his deposition he stated that he is a sub staff in United Bank of India at Patna Branch. The management transferred him to Marufganj Branch. Later on a compromise was arrived between the parties and on the request of the workman the management considered his request and stayed his transferred order. The workman has further stated that now he has no grievance against the management and he does not want to contest the case, in view of the compromise arrived at between the parties. In his cross-examination he has stated that he is satisfied with the settlement arrived with the management and has no grievance at all against the management.

5. The representative of both the parties stated that as the matter has been settled between the parties, therefore, no dispute award be passed in this case.

6. After hearing the learned representative of the parties as well as the material available on the record and the petition filed by the workman, I am of the view that now there is no dispute at all exists between the parties and accordingly, “No Dispute Award ” is hereby passed. This award is effected after date of publication and gazette.

And accordingly this is my award.

Dictated & Corrected by me.

23.10.2019

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2075.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नवा शिवा इंटरनेशनल कन्टेनर टर्मिनल प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 2/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.11.2019 को प्राप्त हुआ था।

[सं. एल-31025 / 02 / 2017-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 25th November, 2019

S.O. 2075.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, Mumbai* as shown in the Annexure, in the industrial dispute between the management of Nhava Sheva International Container Terminal Private Limited and their workmen, received by the Central Government on 25.11.2019.

[No. L-31025/02/2017-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT:** M. V. Deshpande, Presiding Officer**REFERENCE NO.CGIT-2/2 of 2018****EMPLOYERS IN RELATION TO THE MANAGEMENT OF NHAVA SHEVA INTERNATIONAL CONTAINER TERMINAL P. LTD.**

The Chief Executive Officer,
 Nhava Sheva International Container Terminal P. Ltd.
 Operation Centre,
 Sheva, Navi Mumbai – 400 707.

AND**THEIR WORKMEN**

The General Secretary,
 Nhava Sheva International Container Terminal Ltd.,
 Bunder Kamgar Union, 201, 'C' Wing, Ekdat Aptt.,
 Co-op. Housing Society, Uran-Mora Road,
 Swami Vivekanand Chowk,
 Raigad (Maharashtra) – 400 702.

APPEARANCES:

FOR THE EMPLOYER : Mr. L. L. D'Souza, Representative

FOR THE WORKMEN : Ms. Bhavana Mhatre, Advocate

Mumbai, dated the 24th October, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-31025/02/2017 – IR (B-II) dated 28.12.2017. The terms of reference given in the schedule are as follows :

"Whether the action of the employer of M/s. Nhava Sheva International Container Terminal Private Limited :-

- (i) *in not entertaining the 33 point charter of demands dated 23.02.2016 served by the Nhava Sheva International Container Terminal Ltd. Bunder Kamgar Union [NSICT-BKU] is justified ?*
- (ii) *in not implementing Clause 6.9.1 of the Agreement reached between M/s. Nhava Sheva International Container Terminal Private Limited and Jawaharlal Nehru Port Trust on 31.07.1997 is justified ?"*

2. After the receipt of the reference, both the parties were served with the notices.

3. Read application Ex.22. Parties to the dispute have signed the wage settlement in respect of charter of demands and in view of settlement clause – 38, parties have agreed to file the copy thereof before this court in the present reference for passing the award in terms of said memorandum of settlement.

4. Learned counsel for both the parties have signed this application and stated before me that the parties agreed to file the settlement before this court for passing the award in terms of settlement.

5. In view of this settlement the reference is disposed of. Award be prepared in terms of memorandum of settlement dt. 8.8.19. Hence Order.

ORDER

Reference is disposed of in terms of memorandum of settlement dt. 8.8.19 with no order as to costs.

Date: 24.10.2019

M. V. DESHPANDE, Presiding Officer

August 8th 2019**WAGE REVISION SETTLEMENT****FOR THE PERIOD FROM APRIL 1st, 2016 TO JULY 2nd, 2027**

Memorandum of Settlement Dated 06th August 2019 signed between the Management of Nhava Sheva International Container Terminal Pvt. Ltd. and the Nhava Sheva International Container Terminal Pvt. Ltd. Bunder Kamgar Union, Uran under Section 12(3) of the Industrial Disputes Act, 1947.

Representatives of The Management	Representatives of the Workmen
Mrs. Shradha Goley Head, HR, IR & Admin	Mr. Sanjay Patil Mr. Dnyaneshwar Patil
Mr. Ajay Moghe Head, Operations	Mr. Sunil Bhosle Mr. Jitendra Patil
Mr. Sagar Mhatre Head, HSE	Mr. Mahesh Durne Mr. Jeevan Patil
Mr. Rajesh Samdani Chief Financial Officer	Mr. Dhanraj Patil Mr. Sagar Kadu
Mr. Sachin Shetty AM, HR & Admin	

Recitals

The workmen employed at the Terminal represented by the NhavaSheva International Container Terminal Ltd Bunder Kamgar Union (hereinafter referred to as the BKU) had earlier entered into a conciliation Settlement dated 1st April 2012 (hereinafter referred to as the 2012 Settlement) with the company, which was in force up to 31st March, 2016.

The said Union thereafter informed the company that in the General Body Meeting of the workmen, the Union has been authorized to submit a fresh charter of demands and to negotiate on it and settle and sign a Settlement in that regard. Thereafter, the authorized representatives of the BKU submitted a Charter of Demands vide letter dated 23rd February 2016. The authorized representatives of the Union thereafter had a series of meetings to resolve the demands amicably with a view to ensure future viable working of the Terminal activities.

WHEREAS during the discussions it was specifically pointed out on behalf of the Management that, even after the 2012 Settlement the business of the Company continued to decline due to adverse market conditions and cut throat competition and economic scenario also continued to be unfavourable to the industry in general, and to ports and shipping in particular. The BKU was also informed that the volume of business has dropped by 50% from the date of the 2012 Settlement and there is consequent fall in the revenue and the Company has started incurring losses.

AND WHEREAS the BKU continued to be adamant on their exorbitant demands and declined to accept the offers made by the Management. The demands raised by the BKU were then seized in Conciliation and the proceedings ended in failure. The Conciliation Officer thus submitted a failure of conciliation report and the matter was referred for adjudication to the Hon'ble Central Government Industrial Tribunal No 2 Mumbai (hereinafter referred to as the CGIT) being Reference CGIT No 2/2 of 2018. The BKU filed their Statement of Claim along with an application for Interim Relief. The Management filed its written statement and affidavit opposing the said application for interim relief. After hearing the parties, the Hon'ble CGIT passed an order dated March 14th, 2019 rejecting the application for interim relief made by the BKU.

AND WHEREAS during the pendency of the dispute before the CGIT, an Agreement on productivity incentive was signed on September 4th, 2018 between the Company and representatives of the permanent workmen, granting a reasonable increase to the workmen. All the workmen accepted the increase granted with effect from April 1st, 2018. Thus, even during the pendency of the dispute and even before the application for interim relief was decided the workmen got an average increase of around Rs. 3,000/- from Rs.1,674 to Rs. 3,816 per month in their incentive earnings.

AND WHEREAS after the disposal of the application for interim relief filed by the BKU, several workmen approached the Management to consider granting a reasonable increase in their emoluments, also keeping in mind its financial position, so that the dispute pending before the Hon'ble CGIT can be amicably resolved rather than awaiting the outcome of litigation.

AND WHEREAS the Management considered the views put forth by the workmen and considering the prevailing business scenario and the financial position of the Company impressed upon the workmen that unless there are /is specific commitment/s of achieving the targeted productivity and outputs, no additional financial burden on account of labour cost is justified. The full utilization of available manpower and resources to the best of its capacity to ensure speedy container movement as per the international norms can only ensure the viable day to day working of the Terminal. The flexibility, redeployment and full cooperation in restructuring, reorganizing and technical development / improvement in the terminal activities shall be fully supported by the workmen to ensure the survival and speedy growth of the Terminal activities.

AND WHEREAS the said workmen also assured the Management to work towards achieving the targeted productivity and fully cooperate with the Management in making the Company viable.

AND WHEREAS in view of the requests made by the workmen and their willingness to cooperate with the Management in making the Company viable, the Management had decided to offer an increase in the wages and emoluments of its workmen in terms of the Wage Revision Policy Dated 04th June 2019.

However a section of workmen, who are members of the BKU and had not accepted the Wage Revision Policy had started Go-Slow with effect from 09.06.2019. The matter was later referred to the office of The Regional Labour Commissioner – Central. After prolonged and deliberations and discussions and with the intervention of the Conciliation Officer and RLC(C), Mumbai, both the management and Union agreed to sign the Memorandum of Settlement under Section12(3) of the Industrial Disputes Act, 1947 on 06.08.2019.

In furtherance to the Wage Revision Policy dated 04th June 2019 and “Form – H”, Memorandum of Settlement dated 06th August 2019 signed before The Regional Labour Commissioner, and considering the fact that normalcy has been restored from 07.08.2019 it is agreed as follows:

OBJECTIVES OF THE WAGE REVISIONSETTLEMENT

The purpose of this SETTLEMENT is to ensure harmonious industrial/ human relations between the management and the workmen, to sustain and constant improvement in work efficiency and uninterrupted operations at the terminal.

The basic principles of the Settlement have focussed on:

1. Quality in work to maintain international standards
2. Cost and Productivity Optimization
3. Safety and discipline
4. Reduction in absenteeism and to encourage planned leave culture
5. Elimination of restrictive or wasteful work practices.
6. Reduction of idle time of equipments below 25% of operating time.
7. Making workmen multi skilled, training and development initiatives for their career growth.
8. Create, maintain and promote harmonious industrial relations culture and to develop whole-hearted co-operation between the Management and the workmen on all aspects of Terminal working.
9. Strive for maximum utilization of available human resources, adapting & implementing multiple skills working in the terminal, creating a culture of free mobility as regards to work patterns / practices and thus creating sound economic base by maximizing efficiency.
10. Craft, cultivate and promote disciplined work culture and to improve workman morale.
11. Create and implement safe work practices together with workman’s health, hygiene and housekeeping in the premises of the terminal.
12. Always strive for implementing good operational / productivity oriented practices.
13. Eliminate workman absenteeism, restrictive and wasteful practices by workmen.

TERMS OF THE SETTLEMENT

1. COMPENSATION STRUCTURING

The total CTC (Cost to Company) per workman will be spread over as follows:

Cost to Company (CTC)*	% of CTC
Basic Pay	45.00%
Conveyance Allowance	6.00%,
Education Allowance	7.00%
House Rent Allowance	22.35%
Leave Travel Allowance	2.50%
Medical Reimbursement	5.00%
Company's contribution to. PF on Basic Pay	5.40%
Washing Allowance	3.00%
Bonus	3.75%
Total CTC	100.00%

- Provident Fund – In case of any change of Provident Fund Contribution, the differential in employer's contribution to that extent shall be borne by the employer and vice-versa.
- In addition to the above CTC Structure, it has been agreed to pay an Festival Allowance per year per month as per the below mentioned table:

Period	01.04.2016	01.04.2017	01.04.2018	Till 01.04.2022	01.04.2023	01.04.2024	Till 02.07.2027
Festival Allowance 01.04.2016 to 31.03.2019	500	500	500	500	1000	1000	1000

As the ConcessionPeriod with JNPT is valid upto July 2nd, 2027, it has been decided to sign this Settlementupto July 2nd, 2027. Thus the total increase in CTC will be spread over for a 11 year period, in three phases, commencing from 1st April 2016 to 2nd July 2027, to each category of workmen as per below table:

Spread over (CTC) from 1st April 2016 to 31stMarch 2019

Category	Fixed Increase in monthly CTC to be spread over as per compensation structure at clause 1 hereinabove(Rs.)		
	On 1.04.2016	On 1.04.2017	On 1.04.2018
QC Operator	3500	3500	3500
RTG/RMG/RS Operator	3260	3260	3260
Fantuzzi Operator	3120	3120	3120
Checker / Deck Checker	2870	2870	2870

Spread over CTC from 1st April 2019 to 31st March 2023 as Fixed & Variable (methodology for calculating Variable increase is attached as Annexure "C")

Fixed Increase:

Category	Fixed Increase in monthly CTC to be spread over as per compensation structure at clause 1 hereinabove (Rs.)			
	On 1.04.2019	On 1.04.2020	On 1.04.2021	On 1.04.2022
QC Operator	3500	3500	3500	3500
RTG/RMG/RS Operator	3260	3260	3260	3260
Fantuzzi Operator	3120	3120	3120	3120
Checker / Deck Checker	2870	2870	2870	2870

a. Variable Increase:

For calculation of variable increase for year 01.04.2019 to 31.03.2020, the average of three month's (January 2019 to March 2019) performance will be considered. Thereafter average of previous financial year will be considered for the calculation of variable increase. Methodology for calculating Variable increase is attached as Annexure "C".

Category	Variable Increase in monthly CTC (amounts mentioned herein are maximum (100%) payout per month subject to laid down parameters) (Rs.)			
	On 1.04.2019	On 1.04.2020	On 1.04.2021	On 1.04.2022
QC Operator	1,000	1,000	1,000	1,000
RTG/RMG/RS Operator	930	930	930	930
Fantuzzi Operator	890	890	890	890
Checker / Deck Checker	820	820	820	820

Spread over CTC from 1st April 2023 to 2nd July 2027 as Fixed & Variable (methodology for calculating Variable increase is attached as Annexure "C")

a. Fixed Increase:

Category	Fixed Increase in monthly CTC to be spread over as per compensation structure at clause 1 hereinabove (Rs.)			
	On 1.04.2023	On 1.04.2024	On 1.04.2025	On 1.04.2026 till 02.07.2027
QC Operator	4,000	4,000	4,000	4,000
RTG/RMG/RS Operator	3,720	3,720	3,720	3,720
Fantuzzi Operator	3,560	3,560	3,560	3,560
Checker / Deck Checker	3,280	3,280	3,280	3,280

b. Variable Increase:

For calculation of variable increase, average of previous financial year will be considered. Methodology for calculating Variable increase is attached as Annexure "C".

Category	Variable Increase in monthly CTC (amounts mentioned herein are 100% payout per month) (Rs.)			
	On 1.04.2023	On 1.04.2024	On 1.04.2025	On 1.04.2026 till 02.07.2027
QC Operator	1,000	1,000	1,000	1,000
RTG/RMG/RS Operator	930	930	930	930
Fantuzzi Operator	890	890	890	890
Checker / Deck Checker	820	820	820	820

For sake of clarity, the calculation is shown as an illustration below:

(the CTC figures mentioned in calculation are for the purpose of example only)

Example for the period from 1.04.2016 to 31.03.2019

(Example)	CTC as on as per Clause 1	CTC annual spread over Increase	CTC, as per clause 1, after Increase as on		
Category	31.03.2016		1.04.2016	1.04.2017	1.04.2018
	A (Rs)	B (Rs)	C= A+B (Rs)	D= C+B (Rs)	E=D+B (Rs)
QC Operator	45,000	3,500	48,500	52,000	55,500
RTG/RMG/RS Operator	40,000	3,260	43,260	46,520	49,780
Fantuzzi Operator	35,000	3,120	38,120	41,240	44,360
Checker / Deck Checker	30,000	2,870	32,870	35,740	38,610

Example for the period from 1.04.2019 to 31.03.2023(methodology for calculating Variable increase is attached as Annexure “C”)

Example Category	Monthly CTC as on 31.3.19	Monthly Increase in CTC from 1.04.2019 to 31.03.2023					Monthly CTC after Increase as on			
		Fixed	Variable 100%	Annual Parameters Achieved %*	Achieved Variable	Total	1.4.2019	1.4.2020	1.4.2021	1.4.2022
		A (Rs)	B (Rs)	C (Rs)	D	E= C*D (Rs)	F=B+E (Rs)	G= A+F (Rs)	H=G+F (Rs)	I= H+F (Rs)
QC Operator	55,500	3,500	1,000	80%	800	4,300	59,800	64,100	68,400	72,700
RTG/RMG/RS Operator	49,780	3,260	930	80%	744	4,004	53,784	57,788	61,792	65,796
Fantuzzi Operator	44,360	3,120	890	80%	712	3,832	48,192	52,024	55,856	59,688
Checker / Deck Checker	38,610	2,870	820	80%	656	3,526	42,136	45,662	49,188	52,714

*Annual parameters achieved are considered in above table as 80% out of maximum 100% for illustration purpose only.
Example for the period from 1.04.2023 to 02.07.2027

(methodology for calculating Variable increase is attached as Annexure “C”)

Operator	CTC as on	CTC Increase from 01.04.2023 to 02.07.2027 (Rs)					CTC after Increase as on (Rs)			
		31.3.23	Fixed	Variable 100%	Achieved %	Variable	Total	1.4.2023	1.4.2024	1.4.2025
	A	B	C	D	E= C*D	F= B+E	G= A+F	H= G+F	I= H+F	J= I+F
QC Operator	72,700	4,000	1,000	80%	800	4,800	77,500	82,300	87,100	91,900
RTG/RMG/RS Operator	65,796	3,720	930	80%	744	4,464	70,260	74,724	79,188	83,652
Fantuzzi Operator	59,688	3,560	890	80%	712	4,272	63,960	68,232	72,504	76,776
Checker / Deck Checker	52,714	3,280	820	80%	656	3,936	56,650	60,586	64,522	68,458

The CTC increase granted from 1st April 2016 to 2nd July 2027 as shown above and the breakup of above CTC will be as per Point 1 :-Compensation Structuring of this Settlement.

The above annual increase will not be granted to the workmen whose Leave without Pay or unauthorised absence is more than 12 days in the last financial year and penalty points will be applicable as per the Point 30 of this Settlement. In addition, the provision of Certified Standing Orders will be applicable to the workmen for any misconduct. Non applicability of the annual increase for more than 12 days of LWOP (leave without Pay)/unauthorised absence shall be effective from the date of signing of this Settlement. Company may consider cases of genuine nature at its sole discretion and the same will not be a matter of right of the workmen or the Union.

2. EX-GRATIA

The Ex-Gratia amount will be payable annually to only those workmen /employees of the Company who have actually worked for 223days in the preceding year.

The workmen will not be entitled to claim any ex-gratia as a matter of right. However, the same is being paid only on the assurance of maintaining better productivity as per the norms and maintaining Industrial Peace, normalcy in the day to day movement of containers as per International Standard, adherence to all company instructions and certified standing orders and maintaining safety and discipline. The management of the company has also agreed to accept the financial burden of ex-gratia payment only on the assurances given above.

The Management of the Company intends to run and control the terminal activities as per the international levels and compete in the market with a view to provide speedy and best quality services to the customer.

The ex-gratia amount, subject to the conditions mentioned herein, is as follows:

Sr. No.	Accounting Year	Amount (Rs)
1.	2019-20	18200
2.	2020-21	18700
3.	2021-22	19200
4.	2022-23	19700
5.	2023-24	20200
6.	2024-25	20700
7.	2025-26	21200
8.	2026-27	21700

This payment is being made as a special case and cannot be claimed as a matter of right in future as well as it cannot be termed as custom, usages or practices or used /claimed as a precedent in future.

The provision of actual working of 223days will be applied from the date of this Settlement.

CEO has discretion to waive off the mandatory working of 223 days on case to case basis.

3. PROMOTION

The existing practices of granting preference to internal candidates for promotional vacancies arising, subject to suitability such as fulfilment of qualification, age, experience, attendance records, disciplinary records and expertise stipulated for the promotional position, other things being equal, will continue. However, decision of the management regarding consideration of candidature is final and binding, as same is the prerogative of the management. It will be mandatory upon workmen to take promotion for next higher position as and when offered by the Management. In case if a workman does not accept the promotion, he will be debarred from applying for any promotional post for five years from the date of refusal. This debarment will not apply in cases of persons being found medically unfit for that (new) position.

- Promotion from RS/RTGC/RMGC to RMQC – INR 3500.00
- Promotion from Checker/Deck Checker to RTGC/RMGC/RS – INR 2500.00

4. MEDICAL BENEFIT / MEDICLAIM POLICY

For the period January 9th 2020 to March 31st 2020, the company will provide medical insurance coverage of proportionate amount of annual premium limit of Rs. 20,000/- (Rupees twenty thousand only) excluding taxes per workman.

For the period April 1st 2020 to March 31st 2023, the company will provide medical insurance coverage within the premium limit of Rs. 20,000/- (Rupees twenty thousand only) excluding taxes per annum per workman.

For the period April 1st 2023 to March 31st 2027, the company will provide medical insurance coverage within the premium limit of Rs. 22,000/- (Rupees twenty two thousand only) excluding taxes per annum per workman.

For the period April 1st 2027 to July 2nd, 2027, the company will provide medical insurance coverage of proportionate amount of annual premium limit of Rs. 22,000/- (Rupees twenty two thousand only) excluding taxes per workman.

If the workmen intend to avail a higher coverage where the premium amount exceeds the agreed premium amount, the costs towards additional premium will be borne by the workmen. All workmen, whether those who opt for a higher coverage or otherwise will be covered under the same Service Provider.

Five representatives from workmen in assistance of the Management will be nominated by the company to administer and monitor the policy and its working, with no additional liability to the company. However the final decision would rest with the Management.

ACCIDENT INSURANCE IN CASE OF DEATH/ DISABILITY –

The coverage of the workman's insurance for death/ disability arising out of and during the course of employment will be as per the provisions of Employees Compensation Act.

5. OVERTIME

The Overtime payment shall be made as only on Basic and HRA.

6. LEAVES

Workmen will be entitled for following leaves every year i.e. during the period from April to March:

Leave	Quantum
Casual Leave	8 days
Privilege Leave	21 Working days
Sick leave	6 days
Maternity Leave	As per provisions under the Maternity Benefits Act
Port Closed Holidays 1. Republic Day - 26th January 2. Maharashtra Day - 1st May 3. Independence Day - 15th August 4. Gandhi Jayanti - 2nd October	4 days (if weekly off falls on Port Holiday, the workman will be entitled for one additional off.)

There will not be any encashment of leave except in cases where leaves have been applied by the workmen and denied by the Manager in charge on account of operational and business exigencies or for any sufficient reason or without giving alternate days to avail. The detailed leave rules are annexed in **Annexure “A”**.

7. COMPENSATORY OFF

It has been agreed between the parties that if the workman has to work on the days of his Weekly Off then in turn the said workman shall be entitled for Compensatory Off or can claim the equivalent wages for working on that day. Compensatory Off to be availed within 15 days. The detailed leave rules are annexed at **Annexure “A”**.

8. TRANSPORT FACILITY

The existing practice of providing Bus facility shall be continued as it is, and no new bus routes shall be introduced during the operation of the Settlement. However, the bus routes shall be discontinued after the availability/ introduction of public transport in the area.

The current existing Bus transport facility from Panvel, Belapur, Uran and Chirner for shift workmen will continue to operate till availability/introduction of public transport in the area.

The transport arrangements/facility will not be considered by the workmen as customary privilege and usage of practice and cannot be claimed as a matter of right.

In case the situation is beyond the control of the Management on any account i.e. due to transporter's strike, riot, civil disturbance, shortage of fuel, road blockades, natural calamities if the bus services are not available, the workmen concerned will make their own arrangements to report on duty in time and at no cost to the company.

9. REST ROOM AND CANTEEN FACILITIES

The existing Rest room and canteen facilities will continue as it is. The workmen must maintain the discipline and cleanliness in rest room and canteen. They must swipe the card every time for taking the food or extra food.

The sharing of cost of eatables served in the canteen will continue to be 20% and 80% workman's and company's share, respectively. There will not be any change in the sharing ratios during the operation of the Settlement.

10. SHIFT WORKING HOURS

The Shift timings will be as under:-

1st Shift - 07:00 to 15:30 hours (inclusive of 1/2 hour break, on rotation)

2nd Shift - 15:00 to 23:30 hours (inclusive of 1/2 hour break, on rotation)

3rd Shift - 23:00 to 07:30 hours (inclusive of 1/2 hour break, on rotation)

General Shift - 08:45 to 17:45 hours (inclusive of 1/2 hour break, on rotation)

There needs to be strict implementation of "Hot Seat Change over".

The terminal works round the clock and vessels are operationally required to be completed for sailing as per scheduled window timing, therefore, workmen will ensure that rostered workmen attend duties or whenever called after a shift to complete the ship for sailing in time. However, in any circumstances they will not work more than 12 hours save and except in cases of absence of the reliever. The workmen should co-operate in this account in totality and with true spirit.

11. HOT SEAT CHANGEOVER AND RELIEVING RATIO

Hot Seat: It is resumption of work after the shift change/relieving with a stoppage of maximum 5 minutes for mandatory checks as per SOP wherever applicable.

Objective is to ensure the constant operations of equipments to achieve the targeted Productivity.

During the shift hours the workman will have to continue to work till his reliever takes the charge of the equipment/location as a replacement. In case there is no reliever for any reason what so ever, the workmen will arrange among themselves for relieving (with intimation to tower control about the arrangement done) and till that time workmen/operator will hold the position and not leave the workplace and equipment in idle condition.

In case the reliever does not come then it will be the duty of the Operator to inform the Tower control of the same, within 15 minutes after scheduled relieving, and wait for the instructions before leaving the equipment. In case the Operator gets down from the equipment without informing the Tower control and/or before he receives instructions from the Tower Control, then he will be liable for strict action as per penalty point no. 30 besides being charged for misconduct.

- I. Relieving Ratio for various equipment will continue as under :
 - Quay Crane Operators 2:1
 - RTG/ RMG/ RSH/ Fantuzzi/Checkers 3:1
- II. If the workman is a regular defaulter then he will be liable for strict disciplinary action.
- III. Management will ensure safe practice of taking food during the relief time and it is mandatory for all workmen to have meals within the Canteen area only.

12. MEDICAL CHECKUP

The periodical medical check-up (including HIV /AIDS Test) of workmen, those who are 40 and above years of age once in a year and to those below the age of 40 years , once in two years, is already being done as per the provisions of Dock Workers (Health, Safety and Welfare) Regulations, 1990 and same will continue. If any workman found unfit to discharge his duties in the yearly Medical Checkup the concerned workman shall be required to obtain Fitness Medical Certificate from company's Panel Medial Doctor / Civil Surgeon. The decision of Panel Doctor/ Civil Surgeon in these regards will be consider as final and cannot be challenged. A workman will continue in service only if he is medically fit.

13. PERSONNEL PROTECTIVE EQUIPMENT (PPE)

The PPE are issued as a safety measure to the workmen and therefore it is their responsibility to ensure the safe custody of the same. In the event of losses of PPE, the company will issue new PPE only after deducting the following amount/s indicated against respective items. However, above items can be re-issued to workmen only on return of old ones subject to inspection of the same by the HR representative.

	Cost (Rs)
Boiler Suit	683
Safety Shoes	751
Helmet	260

Rainy Wear	866
Winter Wear	578
Hand Gloves	30

The workmen will not be allowed to report at work place without wearing PPE and if he fails to observe this, then he shall be marked as absent and liable for strict disciplinary action and penalty as per point no 30 of this Settlement.

14. TRANSFER / CHANGE IN JOB/FLEXIBILITY/DEPUTATION

It is agreed by both the parties that transfer of an workman is prerogative of management and therefore seeking consent of union does not arise. However, union may be kept posted time to time in the matter of transfer/ change of job.

In exigencies like change in planning, re-organising, modernization, automation, shutdown, absenteeism, the workmen shall be deployed from one job/ line/ section/ in to any location or Group Company of DP World. Same will be done on mutual understanding basis. If any workman is sent for deputation it would be on mutual understanding and one year for International assignment and one month within India.

15. INCREASE IN PRODUCTIVITY AND EFFICIENCY OF OPERATIONS, CONTINUOUS IMPROVEMENT & CHANGE IN WORK PRACTICES

The Company is at liberty to take such steps as may be necessary in sections / departments of the terminal, which may yield higher efficiency, Service and productivity and the workmen will support and cooperate on these initiatives such as;

- a. Rationalization, standardization, simplifications, automation, modernization of plants and equipments, mechanization of work techniques.
- b. Change of layout of production equipments, assembly lines, work lines, and other work places.
- c. Installation of modern machines, use of tools, jigs and fixtures and change in process and methods.
- d. Improve and optimize utilization of man-power, materials, machines, tools, space, power and other resources.
- e. Introduction of new advance technology for reduction of cost and improvement of quality of the services.
- f. To maintain flexibility in deployment of workforce from one department Category to another, depending on the operational needs of the company.
- g. It is management endeavour to provide best operating conditions for efficiency, It is states that in case workmen wilfully work at a slower pace, or gives at lower output than the qualified output, it shall be treated as breach of this Settlement, and therefore, a misconduct, and they shall be liable for strict disciplinary action, provided it is not due to the fault on the part of the Management.
- h. It is needless to say that the company's survival and prosperity depends on the growth in market share and widening of our customer base. To meet the above goal, Company may undertake developing new work practices. The workmen must undertake these developments and accomplish the 'productivity targets set by the Management.
 - i. Outputs in all the departments will be reported to the Shift Supervisor concerned at the end of shift.
 - j. To plan, direct, control operations of the terminal to introduce new or improved work practices is solely and exclusively the prerogative of the Management.
 - k. Any changes from one to another during shift timing to suit daily planning needs shall be implemented as decided by Shift Supervisor / Manager.
- l. Workmen shall contribute for continuous improvement to achieve 'zero loss / defect' in their respective work areas.
- m. Total Productive Maintenance to be implemented in all areas of the Terminal. As part of maintaining the machines and equipments in good order, the workmen are required to undertake and support normal / routine maintenance including the cleaning of machines, oiling, greasing etc., and also assist the maintenance department whenever there is breakdown of machines / equipments for speedy rectification of the same.
- n. The workmen shall at all-time keep their work area in clean and hygienic condition, be responsible for cleaning their work places / machines and equipment, assist in movement of materials within and between departments and perform tasks incidental to or connected with their main jobs.

- o. Introduction of new technology is essential for the Company and in order to survive in the market and to meet the Customer's changing requirements as well as to overcome competition. Therefore, it is must that the workmen carry out work related to upgraded versions.
- p. To maintain work discipline and to inculcate good behaviour and positive attitude so as to achieve optimum level of productivity and quality.
- q. In order to provide maximum opportunities for continued employment, goodworking conditions, wages and other benefits to the workmen, the Company must be in strong competitive position, which means that workmen must make all efforts to minimise the operating cost through saving of consumables, power and fuel, water, equipments, space etc.
- r. Operators will immediately inform Tower Control regarding any unsafe acts observed in their area. Failure to do so will invite disciplinary action.
- s. No operator will leave his machine with its engine running. This shall be considered a serious breach of regulations and will invite disciplinary action.
- t. When no apparent job order is observed over a span of 3 min, operator will ensure RTG switched to Aux mode, and if same not possible inform Tower Control. When the gap exceeds 5 min, he shall switch off the machine and request Tower Control to have him picked up.
- u. RTG operator will move between jobs to ensure efficient use of equipment. If alternate job • visible, but same not on VMT, he will contact Tower Control for advice.

16. MANPOWER PLANNING & DEPLOYMENT

Manpower planning including deployment / re-deployment of the workmen and engaging contract labour will be at the sole discretion and prerogative of the Management. The management would assess the manpower requirement from time to time and may engage operators as need arise on short term basis via third party service provider.

Deployment and roster of the workmen as per the operations requirement shall be followed strictly. In case of non-compliance of deployment and roster, there will be an impact on the increment and incentive.

17. ACCIDENT AND REFRESHER TRAINING

- I. If an operator is assigned re-training due to accident, he will not be entitled to productivity incentive during training period.
- II. If an Operator commits accident due to negligence, carelessness, or incompetency then such operator will be demoted to the lower grade with applicable wages.
- III. Any loss or damage to any equipment or company's property due to negligence or default of any workmen, the management will have the right to recover such loss from the payments (CTC) and other payments to workman and the workman will also be liable for strict disciplinary action as per certified standing orders and on recommendation by the Grievance Committee and penalty point no.30 will be applied.

18. IDENTITY CARD

In the event of loss or breakage of Identity card, the company shall deduct Rs. 100/- for re-issuing the new card. Concern employee will file the FIR to nearest Police Station and will submit the copy of report to HR Dept.

19. STANDING ORDERS

Other than the disciplinary points mentioned in this Settlement the Service Conditions of the workmen/workmen shall be governed by The Certified Standing Orders and terms of employment. The obligations on workmen under this Settlement for maintaining productivity, operations, maintenance, Safety Standards, rules made in will be part of discipline and violation of any such obligation will attract disciplinary action and penalty point no. 30 will also be applied.

20. SERVICES AND QUALITY

In order to meet the demanding customer needs, workmen must follow quality systems and procedures as set from time to time to achieve continuous improvement in our services as enlisted below: -

- I. Achieving Zero Defect levels in all work areas.
- II. Adopting changes in work practices / operations to meet customer requirements.
- III. Addition / deletion of operations as required due to changing needs of the market.
- IV. Implementation of required changes in quality systems and text cycles based on customer's feedback.

21. SALARY / WAGES PAYMENT

The salary/ wages of workmen are paid on monthly basis and the actual number of days worked will be the basis for calculation. All statutory/ Deduction of employee PF contribution as per PF Act / non statutory deductions will be based on actual number of days in a month. All Non Statutory deductions which are not payable to the Company, will be made immediately on the basis of current month data available and there shall not be any adjustments in the following month.

In the event of a workman leaving the company during the year, annual allowances such as education allowance, festival allowance, leave travel allowance and bonus paid in advance will be recovered proportionately.

22. SAFETY & HEALTH

It is the policy of the Company to prevent the occurrence of the accidents so as to ensure a safe and healthy working environment. To achieve this, workmen agree to adhere to the following:-

- i. Increase safety consciousness amongst workmen.
- ii. To maintain safe working conditions, work practices and job methods in all spheres of activities to achieve ZERO accident rate.
- iii. Adherence of all instructions issued by Safety Committee / Management.
- iv. To use all personal protective equipments provided by Management compulsorily for safe working.
- v. To co-operate and comply with safety standards for better working environment.
- vi. The workmen shall adhere to Drug & Alcohol Policy scrupulously.

23. GENERAL

1. It is stated that the irrespective of their grade or seniority the workmen working in operations, Engineering and Support departments would work as a team.
2. It is stated that any technical, legal, arithmetical and typographical error that may have inadvertently crept in the Settlement, will be resolved and rectified mutually and neither party will take undue advantage of the said errors, if any.

24. EFFECT OF LEGISLATION ETC:

If during the currency of this Settlement, due to any legislation, award, order, direction or recommendation issued or made by any legally constituted authority, the central or the state government or any other legally constituted authority issue order or directions for the payment of any benefit identical or similar to those the workmen are allowed under this Settlement, then the workmen shall be entitled to claim the benefits which are more favourable to them, but not both. Provided such option is permitted under the said legislation, award, order, directions issued by Central or State Government or any other legally constituted authority, the workmen will cease to receive benefits under the Settlement.

25. HUMAN RESOURCE UTILISATION

The Management reiterates its policy of treating its human resources as it's most precious and important asset and hence stresses the importance of continuous up-gradation of this valuable resource. The Management also expects and requires the workmen to discharge their duties faithfully and refrain from indulging in acts of indiscipline including, but not limited to, insubordination.

Workmen working in the terminal have been properly trained in all their respective areas and the necessary multi skill training will be arranged for all workmen from time to time to prepare themselves for operating all machines / mechanisms, with a view to enhance their skills for better utilisation of available human resources. The workmen working at the terminal shall be mobile (movements) on any area / shifts (including change in the shift irrespective of the shift rota) during the normal duty hours or extended duty hours as the case may be, as per the requirement of the work and instructions of superiors.

The workmen will give away restrictive work practices and will work at any point of time during the normal duty hours or extended duty hours as the case maybe on any machine / mechanism/department / section / any operation as instructed by the Management.

However, the operators in Operation department will be mobile in all the sections of the Operations and if need arises vice-versa in any other support department.

26. MULTI-SKILLING

While working, workmen will have to perform the job of different nature normally performed in terminal including non-equipment areas and/or operate different types of equipments which the workman is/was trained to operate.

The advantage of multistage & multi-skilling working area,

- Productivity improvement.
- Elimination of disparity between workmen.
- Job enrichment for individuals.
- Equal participation by all workmen.

Refusal to carry out multi skilling tasks will be considered as an act of indiscipline.

27. CONTINUOUS IMPROVEMENT IN HOUSEKEEPING

A clean workplace is the key position for quality improvement, and therefore every workman shall endeavour to maintain cleanliness around his workplace in order to create a congenial atmosphere for better working.

28. STOPPAGE OF WORK

During the tenure of this Settlement and thereafter as well, the workmen shall not resort to any disruption or stoppage of work, agitation, go-slow and such other tactics which would adversely affect the operations and business of the Company at the terminal and any dispute arising out of working conditions, terms of employment shall always be referred to Management for discussion and workmen shall refrain themselves from indulging in any such unlawful action on the premises of the terminal and shall always endeavour to have amicable Settlement / resolution of issues by bilateral discussions between the Management and workmen.

The Management shall be entitled to deduct upto 8 days wages for each day of the period any workman refuse to do work assigned to them or resort to strike / go slow/agitational activities for the period for which the aforesaid action was resorted to from erring workmen. They will also be liable for strict Disciplinary action.

29. OPERATIONAL VIABILITY

Keeping in view the stiff competition, business requirements of operational viability if any change is required to be effected in the conditions of the service of the workmen including that of shift working, rationalization, improvement of layout and machinery, alteration as in technique the workmen agree to co-operate with the Management in implementation of such change as may be required from time to time for the benefit: of both Workmen and Management. The Management will inform such changes to the workmen as and when needed.

30. DISCIPLINE AND PENALTY

- a) The workmen shall always follow the rules of discipline prevailing at any point of time and framed by the Management from time to time in total consistence with statutory provisions.
- b) The workmen will strictly adhere with the following general rules of Shift timing, safety, Security and environment, and they shall use all personal protective appliances at all times while in premises of the factory.
- c) As a matter of discipline all workmen will display their name and company identity card.
- d) Wearing uniform, safety shoes and all other personal protective equipments whenever applicable will be compulsory for all workmen. Workmen not wearing uniform I shoes / personal protective equipments will not be allowed for work.
- e) The workmen shall not leave their respective places of work during working hours except during authorized intervals such as lunch / dinner break, tea break and also no duty time shall be used for any personal work. It is also agreed that, the workman shall not waste any time in canteen/ locker room/ Rest Room during the working hours.
- f) No workman shall go out of the Terminal area during lunch/ dinner / tea break and working hours without written permission of the management.
- g) The workmen shall agree to work on weekly off day if the exigency of work demand of which the company shall be sole judge. Any workman found missing from his work place without reasonable cause shall be marked absent for the period he is away from his work and shall be dealt with accordingly.
- h) The workmen shall keep the work surrounding neat and tidy.
- i) The workmen will undergo medical examination as required by the Management as and when necessary. In case of personal sickness diagnosed during the Medical examination the workmen concerned will be free to take medical treatment from the medical practitioner of his choice and at his cost. In case of injury sustained while on duty, the workmen will take medical advice from the Doctor designated by the Company only and not otherwise.
- j) The workmen expressly and explicitly agree to extend their whole hearted co-operation to the management in its efforts to eliminate unauthorized absenteeism with the sole objective of achieving uninterrupted norms of activities in the service department.
- k) The workmen has agreed to abide by the established guidelines/safety & Security rules made applicable by the NSICT management authorities time to time.
- l) In the unforeseen event of, an illegal strike, agitation or go slow or abandoning the equipment/work site, the company reserves the right to initiate disciplinary action in addition to deduction of wages of workmen so constituting the aforementioned event/activity.

m) The workmen agree that no workman will leave the terminal premises until expiry of full shift hours in any shift. In case he leaves the terminal premises before completion of shift hours be marked absent on that whole day.

n) The workmen will work on any equipment whenever instructed to do so by the Management

o) In case of any grievance, whether individual or collective, the workmen will approach the HR and higher authorities for resolving the matter. The workmen will refrain themselves from any Gherao, stoppage of work, Go Slow or any other unlawful and antiestablishment activities.

Without prejudice deductions / actions will be initiated by the management for non adherence of following:-*SOP for Hot Seat relieving, sleeping on duty, walking inside the yard, wrong updating of container (not checking number on the container, giving wrong delivery etc). Damages to the any equipment or part of equipments, Not filling checklists by performing pre operations checks, Non Reporting of incident, LOP (Unauthorized absents) etc.*

Sr No	Reasons for Deduction/Penalties	Amount Penalty	Follow up Action	Final Action
1	Sleeping on duty per incident (Not applicable if found sleeping in restroom during rest hours)	Fine Rs 500/- for first incident and Rs.1000/- for Second and third incidents will be imposed.	If repeated by concern workman more than 3 times it will be treated as habitual and liable for stoppage of one increment and if continue than punishment as per certified standing orders.	Liable for disciplinary as per process
2	Hot Seat relieving not done or getting down from standby RTGs / QC/ RMGs/ Reach stacker without information to shift supervisor or tower control	First incident warning letter after that fine Rs 500/- for each incident	If repeated by concern workman more than 3 times then stoppage of one year increment.	Liable for disciplinary as per process
3	Wrong updating of container per incident	First incident Rs. 500 and warning letter after that fine Rs 1000/- for each incident	If repeated by concern workman more than 3 times then stoppage of one year increment.	Liable for disciplinary as per process
4	Working without proper PPE per person per incident	Fine Rs 1000/- per incident	If repeated by concern workman more than 3 times then stoppage of one year increment.	Liable for disciplinary as per process
5	Not Reporting Accident/ Incident per incident	Penalty as per Applicable schemes	If repeated by concern workman more than 3 times Stoppage of one increment.	Liable for disciplinary as per process
6	Not following rules of consequences management of employer	Fine Rs1000/- per incident	If repeated by concern workman more than 3 times then stoppage of one year increment.	Liable for disciplinary as per process
7	Raising voice thereby demeaning the position of superior, using abusive language against Colleague, TT drivers or Customer workmen. Unethical rumors or filthy language towards any colleague.	Fine of Rs 5000/-	If repeated by concern workman more than 3 times then stoppage of one year increment.	Liable for disciplinary as per process
8	Not following Safety Policy per incident.	Fine Rs 6000/-	If repeated by concern workman more than 3 times liable to be terminated as per process.	Liable for disciplinary as per process
9	Over and above that if we receive any penalties for unsatisfactory performance; the same should be borne by the workmen respectively, but it would be reasonable and within the financial capability	Total Penalty/No. of workmen	If repeated by concern workman/en more than three times liable to be grounded as per process on the recommendation of Grievance Committee	Liable for disciplinary as per process
10	Leave without Intimation for one	First incident Warning letter	If repeated by concern workman more than 12 times in	Liable for disciplinary as per process

	day (Unauthorized absent)	Thereafter disciplinary action as per standing orders.	a year will be considered as habitual absentee and liable for strict disciplinary action as per certified standing orders	
11	Involved in incident and found negligent and contributing to incident during investigation	Decision will be taken by the Management depending upon the severity of the incident / damage.	Initiate Penalty mechanism/Consequence management process and initiate DPW HSE Accountability matrix as applicable.	Liable for disciplinary action as per process

For the Incidents / Accidents, HSE Department will carry out the investigations and as per the recommendations from Head HSE, appropriate action will be taken by the management. Aforesaid deductions will be made from the wages / incentives of the concerned Workman who is actually responsible for the above said misconduct. HOD-Operations and HOD-HR will discuss and recommend the course of action / penalty to be imposed.

31. GRIEVANCES PROCEDURES:

The resolution of the dispute / grievance of the workmen, a six member committee (Equal numbers from management and from workmen) will be formed as per the provisions of the Industrial Dispute Act u/s 9 C. Representation of at least one female member will be mandatory. The committee will address the individual grievance issues related to discipline, penalty provisions as per point 30 of this Settlement etc. However without prejudice, the management is free to initiate disciplinary actions as per the provision of certified standing orders.

32. PERSONAL CONTACT DETAILS FOR OFFICIAL COMMUNICATION

All workmen will give the contact details in format prescribed at **Annexure “E”**. In case of change in residential address/phone number / email address either local or native place will be notified to HOD-Operations / HOD-HR by the workmen concerned in writing and within 48 hours of such change. However, in case of failure to do so the latest contactdetails in the personnel records of the Company shall be considered as current details for communication.

33. IMPLEMENTATION

All workmen will declare their wholehearted commitment to fulfil the terms of the Settlement and assure fully to abide by the terms and conditions, agreed productivity, discipline and other obligations to be carried out individually and jointly with other workmen. In case of non-implementation of terms agreed by this Settlement, by any workman individually or jointly, the Management withheld the right of withdrawing benefits offered through this Settlement.

34. DATE OF BIRTH

The date of birth as declared by the workmen in the personnel records of the company at the time of initial employment shall not be changed in future. Documentary evidence such as school leaving certificate, Birth certificate, Domicile certificate, SSC / HSC certificate should be furnished immediately on appointment of workman. If any workman gives any wrong or false information about his birth, address, or any other personal information to get employment, he will be liable to be terminated from employment.

35. PROJECT AFFECTED PERSONS (PAP) CERTIFICATES

The workmen who are JNPT/CIDCO Project affected shall submit the original certificate to the company.

36. APPLICABILITY AND OTHER TERMS

- I. The provision of this Settlement shall be applicable only to permanent workmen (excluding Management Staff) and who are on the payroll of company on signing date of this Settlement including those who have accepted the Wage Revision Policy dated 4th June, 2019, and those workmen who confirmed thereafter from the date of their confirmation.
- II. Demands as per demand letter dated 23rd February 2016 or any other demands raised directly or indirectly anywhere stand not pressed / dropped shall be deemed to be settled accordingly and the same shall not be raised or agitated during the tenure of this Settlement either with the company or any Government Official or any outside Body or even the management.
- III. It is agreed that the workmen will not raise individually and/ or collectively any demand(s) whatsoever whether involving additional financial burden or not of whatsoever nature on the employer during the tenure of this Settlement either with the company or any Government Official or any outside Body or even the management.
- IV. It is agreed that the workmen will maintain good conduct, behavior and discipline within the terminal premises at all times as per the company Rules and Certified Standing Orders.
- V. It is agreed through the Undertaking “**Annexure D**” that the workmen will also maintain minimum productivity as per the terminal standards for Quay Crane Operator: 21 moves/ hr (27 for twin lift QCs) and RTGC / RMGC Operator: 11 moves / hour and ensure smooth functioning of terminal operations. The workmen will not indulge in Work to Rule, Go Slow, Work Stoppage, Indiscipline or any such disruptive activity that causes an operational, safety & financial loss to the company.
- VI. In case there is any positive change to the Royalty payable to Jawaharlal Nehru Port Trust, then a bilateral review of settlement may be considered.

38. PERIOD OF THE SETTLEMENT

The Settlement shall come into force with effect from 1st April, 2016 and shall be for a period of Eleven years i.e. from 1st April, 2016 to 2nd July, 2027. It is explicitly understood and agreed that under no circumstances, whatsoever may be the reasons; this Settlement shall be modified, substituted or terminated before expiry of the Settlement. More specifically, the workmen hereby agree and undertake that in case of change in their constitution, Union Committee or in their affiliation; shall not demand the termination of the Settlement nor they shall demand any alteration in the terms of Settlement and the same shall due to be binding on either parties till terminated in accordance with law. It is stated that the benefit of the Settlement will be extended to those permanent workmen of the company who give the undertaking in the enclosed format confirming the acceptance of the terms and conditions of the Settlement which is at **Annexure “B”**. It is agreed that any dues taken in past by the workmen from the company will be deducted proportionately under this Settlement.

The Wage Revision Policy dated 4th June, 2019 stands replaced by this settlement being a conciliation settlement binding all workmen.

WITHDRAWAL OF ALL PENDING LITIGATION

Both the parties agree to file this settlement before the Hon’ble Central Government Industrial Tribunal No 2, Mumbai in Ref CGIT No 2/2 of 2018 for passing an Award in terms of the Settlement.

The Union agrees to withdraw the Writ Petition, being Writ Petition No 1732 of 2019 filed by them in the Hon’ble Bombay High Court against the orders passed by the Tribunal rejecting their application for interim relief. The Union

also agrees to withdraw all disputes/claims filed against the Company/Management before any Court/Tribunal/Authority under any provisions of any Labour Statutes on any issue concerning their employment or conditions of service.

It is agreed by and between the parties that the Charter of Demands contained in the letter dated 23.02.2016 referred hereinabove shall be deemed to have been settled in to-to. Demands which have been raised in the Charter of Demands but not referred to and/or dealt within this Settlement stand withdrawn. The Union and workmen have agreed not to raise any demands, whether involving any financial burden or not, during the tenure of this settlement.

ANNEXURE “A”
RULES AND REGULATIONS FOR LEAVE
(FOR CONFIRMED WORKMEN ONLY)

PREAMBLE:

Leave is not a matter of right, it is a facility extended by the company to meet exigencies.

These rules supersede all existing rules, minutes, understanding or any other communication from the Company to the workmen and vice-versa. These rules are already affected and shall be renewed/updated as and when necessary by the Company.

CASUAL LEAVE (CL)

1. CL is leave of short duration need, to meet a special unforeseen circumstances or emergency requiring the workman's presence. CL cannot be taken on sickness ground.
2. The quantum of CL shall be 8 days per annum. The same will be credited in advance at the beginning of the financial year i.e. 1st of April.
3. A workman who joins in between financial year shall be entitled to CL on pro-rata basis, his CL quantum shall be proportionate to the number of days of service he will put in upto 31st March of the current year.

$$\text{No of Days of } X \quad \frac{8 \text{ days}}{365 \text{ days}}$$

4. A workman shall obtain a prior sanction of CL from his supervisor for availing of CL
5. CL cannot be taken for more than 3 consecutive days. CL is not cumulative
6. CL cannot be prefixed or suffixed with any other leave.
7. In normal circumstances a workman should apply for CL at least one week in advance.
8. No CL encashment will be allowed.

SICK LEAVE (SL)

1. The quantum of SL will be 6 days. The same will be credited in advance at the beginning of the financial year i.e. 1st of April every year.
2. An workman who joins in between financial year shall be entitled to SL on pro-rata basis, his SL quantum shall be proportionate to the number of days of service he will put in upto 31st March of the current year.

$$\text{No of Days of } X \quad \frac{6 \text{ days}}{365 \text{ days}}$$

3. An workman must submit his sick leave application immediately on resuming duty.
4. As a special case, SL can be combined with PL, provided the workman is hospitalized during the sick period, this will be at the discretion of the Management.
5. An workman who remains absent on account of sickness will have to submit a medical fitness certificate from a registered medical practitioner (minimum MBBS) immediately on rejoining duty. Company shall have discretion to verify the authenticity of the medical and illness certificate submitted by the workman. Non submission of certificate from competent doctor or false certificate will attract disciplinary action as per certified standing orders and penalty point no. 30 of this Settlement, and leaves will be treated unauthorized.

6. Accumulation of SL will be allowed upto the 10 days. No encashment will be allowed.

PRIVILEGE LEAVE (PL)

1. The quantum of PL shall be 21 Working days PL will be credited on 1st April, of the following year to the PL account of all those permanent (confirmed) workman who remain on the rolls of the Company for the full calendar year.
2. The entitlement of PL for the newly appointed workman will be calculated as under. He will be entitled to PL only on completion of one year of his service with the Company, therefore PL will be calculated as follows:

$$\text{No of Days of service} \quad \times \quad \frac{21 \text{ days}}{365 \text{ days}}$$

Normally an workman is allowed to take PL on four occasions in a year.

3. An workman shall be allowed either prefix or suffix his PL with a fix day of rest, but not both.
4. If an workman extends his PL for any reason whatsoever, the suffix fixed day of rest will be deducted from his leave entitlement.
5. PL cannot be taken for less than 4 days.
6. A workman shall be intimated within 5 working days of application about the sanction or refusal of his leave.
7. If a workman proceeds on leave on or before the last day of the financial year i.e. 31st March he will be treated as PL availed off in the same year.
8. Advance PL on pro-rata basis will be granted at the discretion of the management depending on the merit of the case.
9. Workmen / employees will plan their PL well in advance every year in the month of April and get it approved by Operations Head. Workman / employee will submit leave application at least 30 days in advance for sanctioning. PL will be sanctioned at the discretion of the departmental head.

PUBLIC HOLIDAYS

1. The quantum of Public Holidays shall be 4 days i.e. 26th January, 1st May, 15th August and 2nd October.
2. Workman working in shift rota and those assigned urgent duty maybe required to work on such declared Public Holidays, workman working in shift rota may avail off Public Holidays with prior permission of his supervisor.
3. If a workman is called on duty on Public Holidays, he will be paid overtime and one day compensatory off which has to be availed within two months of such public holiday, with the prior permission/sanction of Superior.

General

It is very clear that Management has right to reject the leave seeing business exigencies. Management has also right to reject the leave extension application. Further, If a workmen is already on leave and wants to extend, he has to send extension of leave application before expiry of leaves taken earlier. Application of leave will not constitute the sanction of leave, till it is sanctioned in writing.

Definitions:

1. **Unauthorized Absenteeism:** To be absent from the rostered duty without prior intimation / approval from the Management even when the leaves of the employee are available.
2. **Authorised Leave Without Pay:** In case all the leaves are exhausted, employee takes prior approval from the Management for availing leave from duty due to genuine reasons such as illness, family member illness etc.

3. **Unauthorized Leave Without Pay:** In case of all the leaves gets exhausted and employee remains absent from duty without prior intimation / approval from the Management.

ANNEXURE “B”**UNDERTAKING**

I have read and understood the Wage Revision Settlement dated August 8th, 2019 signed by our representatives and the Representatives of the Management revising the wages and service conditions of employees basis the Memorandum of Settlement signed before the RLC on 06th August 2019.

The terms and conditions of the Wage Revision Settlement dated August 8th, 2019, are acceptable to me and I request the Company to extend the same to me.

I agree and accept that if the revised terms and conditions are offered to me, all my claims/demands for increase in wages, allowances and other services conditions pending before the Hon'ble CGIT No 2 Mumbai, Ref. CGIT No 2/2 of 2018and as well as any proceedings pending before any Authority concerning my service conditions shall stand withdrawn as fully resolved. Accordingly, I shall withdraw all the cases filed before different authorities individually / through representatives/Union against the management.I further agree and accept that I will not raise any demands on the Company whether having any financial implications or not during the period specified in the Wage Revision Settlement dated August 8th, 2019.

I also agree to maintain proper discipline in the manner of discharge of my duties.

I am giving this undertaking of my own free will and volition and without any force/coercion/undue influence from any person. The contents of this undertaking and the Settlement have been read and explained to me and I have fully understood the same.

Dated:**Signature of the Employee**

Witness No. 1 (Name and Signature): _____

Witness No. 2 (Name and Signature): _____

Annexure "C"

SR. NO	DESCRIPTION	PARAMETER								POINTS	
		Single Lift			Twin Lift			Points			
1	Average Annual GCR (Terminal Performance)	0.00	TO	16.99	0.00	TO	21.99	-25			
		17.00	TO	17.99	22.00	TO	22.99	-20			
		18.00	TO	18.99	23.00	TO	23.99	-15			
		19.00	TO	19.99	24.00	TO	24.99	-10			
		20.00	TO	20.99	25.00	TO	25.99	0			
		21.00	TO	21.99	26.00	TO	26.99	10			
		22.00	TO	22.99	27.00	TO	27.99	15			
		23.00	TO	23.99	28.00	TO	28.99	18			
		24.00	TO	24.99	29.00	TO	29.99	22			
		25.00	TO	25.99	30.00	TO	30.99	27			
		26.00	TO	Above	31.00	TO	Above	30			
2	Produced Moves (Actual individual moves plus notional moves in case of absenteeism)	QC	QC	RTG	RTG	RMG	RMG	OTHERS	OTHERS	DECK	Points
		FROM	TO	FROM	TO	FROM	TO	FROM	TO	FROM	TO
		0	549	0	399	0	399	0	349	0	549
		550	625	400	500	400	500	350	400	550	625
		626	725	501	600	501	600	401	500	626	725
		726	825	601	700	601	700	501	600	726	825
		826	950	701	800	701	800	601	700	826	950
		951	1100	801	950	801	950	701	800	951	1100
		1101	1200	951	1050	951	1100	801	900	1101	1200
		1201	Above	1051	Above	1101	Above	901	Above	1201	Above
3	Conduct									Points	
										0	
4	Absenteeism (Unauthorized LOP)									Points	
										5	
5	Property damage and incident *									-5	
										-5	
										Points	
										0	
6	Year Experience at DPW									Points	
										-30	
										-40	
										-50	
										-60	
Incident means injury to any person in terminal premises due to that the person is not able to attend next scheduled shift or damages of above Rs. 50,000.											

*Negative marking will be only for Safety, Absenteeism and Terminal Performance.

ANNEXURE “D”
UNDERTAKING

06th August 2019

To,

The Head – HR, IR & Admin,

Nhava Sheva International Container Terminal Pvt. Ltd.

Sheva, Uran.

Dear Sir/Madam,

I hereby undertake to maintain good conduct, behavior and discipline within the terminal premises at all times as per the company Rules and Certified Standing Orders. I will also ensure to maintain minimum productivity as per the terminal standards for Quay Crane Operator: 21 moves/ hr (27 for twin lift QCs) and RTGC / RMGC Operator: 11 moves / hour and ensure smooth functioning of terminal operations. I will not indulge in Work to Rule, Go Slow, Work Stoppage, Indiscipline or any such disruptive activity that causes an operational, safety & financial loss to the company.

Name:

ID:

Sign:

Date:

ANNEXURE "E"

I hereby declare that for all official purpose my contact details are as under:

Address: _____

Phone No. _____

Email ID: _____

In case of any change in the above information, the same will be notified in writing to Head HR / Head Operations within 48 hours.

I hereby confirm that above information is correct to the best of knowledge; in case found incorrect I would be liable for necessary disciplinary action.

Name:

ID:

Sign:

Date:

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2076.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (35/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.11.2019 को प्राप्त हुआ था।

[सं. एल-12012/10/2009-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 25th November, 2019

S.O. 2076.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2009) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Bank of India, and their workmen, received by the Central Government on 25.11.2019.

[No. L-12012/10/2009-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE NO. 35/2009

Date of Passing Award- 26th September, 2019

Between:

Shri Ram Lal,
S/o Late Shri Abhay Ram,
R/o Village Ugrahu, Po
Kailashpur,
Saharanpur (U.P.).

...Workman

Versus

1. The Zonal Manager,
Bank of India, Zonal Office,
B-32, Sector-62,
Noida (U.P)- 201307.
2. The Branch Manager,
Bank of India,
LalaTrilok Chand Jain Market,
Saharanpur (U.P)

...Managements

Appearances:-

Shri N. S. Berchiwal (A/R)	For the Workman.
Shri Rajat Arora (A/R)	For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bank of India, Zonal Office, and its workman/claimant herein, under clause (d) of sub-section (1) and sub Section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/10/2009 IR (B-II) dated 29.04.2009 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Bank of India in disengaging/terminating the services of Shri Ram Lal w.e.f 23/04/2008 engaged on the work of sub staff in Bank of India, Saharanpur Branch without any notice and compensation under the provision of section 25-F,G, and H of Industrial Dispute Act 1947 is legal and justified? What relief the concern workman is entitled to?”

Being noticed both parties entered appearance.

The claimant workman filed a claim statement pleading there in that 11.01.1993 he was appointed as a permanent substaff of the Bank and an appointment letter was also issued to him. On a later date the management took that appointment letter on the pretext of putting a dispatch number the same andreturn. But the same was never returned despite repeated demand by the claimant. He was discharging the duties of a peon/daftary as per the direction of the management. Due to shortage of staff he was also working for making entry in different registers along with his own work as a peon. The work discharged by him was to the utmost satisfaction of the management. For the permanent nature of work discharged by him, had an employer employee relationship with the bank which would be evident from various records of the Bank including the peon delivery book minutes proceedings of the staff meeting etc.

During the period/tenure of his work, no charge sheet or showcause notice was ever served on him for any dereliction in duty. But the management, on 23.04.2008 illegally terminated his service in gross violation of the provisions of section 25(F)(G)(H) of the ID Act. Having been completed 240 days of work in the preceeding calendar year, the workman is entitled to the protection guaranteed u/s 25F,G, and H of ID Act. The illegal work of the management left the workman unemployed since, by working for the bank for 15 years he had crossed the upper age limit of employment on the date of his termination. Finding no other efficacious remedy, he had approached the Labour commissioner where a conciliation proceeding was initiated. Conciliation since failed, the appropriate government referred the matter to this tribunal for adjudication.

The management bank on the other hand resisted the claim of the workman with a plea that the claimant was never appointed by the Bank but was engaged intermittently on daily wage basis. His engagement was need based. There was no relationship like employer or employee between the bank and workman. While challenging the maintainability of the dispute as the same does not fall within the meaning of section 2(K) of the ID Act, the further stand of the management is that the workman had never worked for 240 days in a calendar year, so as to get the protection u/s 25f,G, and H of the ID Act. Since the workman was never appointed by the Bank, the allegation of termination is not tenable. The workman had filed a writ petition before the Hon'ble High Court of Allahabad alleging discrimination and the same was dismissed. While denying all other stand taken by the workman, management further pleaded that there was a vacancy in the post of safaikaramchari at Saharanpur Office of the Bank. As per Rules, the management Bank asked the Employment Exchange to sponsor the candidates. The employment Exchange had sponsored the names of 5 candidates which did not include the name of the claimant. Out of those 5 persons one was appointed. The decision of the Bank was challenged before the Hon'ble High Court of Allahabad. But the writ petition was dismissed vide order dated 23.04.2008 on merit.

On these rival pleadings the following issues were framed.

ISSUE

(1) As per the terms of the reference.

The claimant/workman examined himself as WW1 and proved the documents marked as WW1/1 , WW1/2 WW1/3. These documents are the vouchers record book, and vouchers etc called from the Bank's record. Apart from these, the workman has also proved the photocopy of the Inter Officer Memorandum of the Bank as MW1/W1 in which workman has been described as a daily wager casual worker of the Bank since 11.01.93. Besides these the workman has also placed on record the copy of the memorandum signed between Bank and Union and a letter dated 28.01.2008 regarding assignment of work to the claimant.

The management Bank examined its senior manager (HR) as MW1, who proved the letter of the Dist. Employment Officer and the list of the persons sponsored by Employment Exchange for appointment of SafaiKaramchari. These two documents have been marked as MW1/1 and MW1/2.

The Learned A/R for the workman argued that claimant was appointed as a peon on 11.01.93 and was made to work for 15 years during which he was discharging the duties of the peon, Daftary and sepoy of the Bank. He was subjected to unfair labour practice since no appointment letter was issued to him and in the year 2008, his service was illegally terminated without following the procedure laid down under law. Not only that in gross violation of the settlement between the Bank management and Bank's Employees Union, the claimant was not considered when appointment was made against permanent post of Safaiwala.

In his reply argument, Ld. A/Rfor the management argued that the said appointment was made in the year 2013, taking into consideration the names sponsored by the Employment Exchange only as per the terms and conditions of

settlement. The name of the workman since was not sponsored, obviously, he was not considered. He also raised objection on the ground that the terms of reference made by the Appropriate Government is only with regard to illegal termination and the adjudication can't be made beyond the terms of reference.

Thus the points on which adjudication is required to be made are

- (a) If the workman was illegally terminated from service.
- (b) If so, to what relief he is entitled to.

Point No. (a)

The workman examined as WW1 has deposed along the line of claim statement and added that the management in order to deprive him of his legal rights did not give any appointment letter nor pay slip. He was being paid through vouchers only. The file containing the vouchers of the relevant period of engagement of the workman has been placed on record as Exhibit WW1/1 being called from the banks custody. Exhibit WW1/2 are certain other documents called from the custody of the bank by the claimant to prove that the said documents contain had writing of the claimant and proves his engagement as a sub staff of the Bank during the relevant period between 1993 to 2008. The claimant has also stated in his oral evidence that pursuant to an advertisement published in local news paper Amar Ujala prior to 11.01.1993 he was appointed and as such his employment can't be said to have been done illegally. These two documents marked as WW1/1 and WW1/2 being the documents of the bank are not disputed by the management. The only objection raised in respect of documents is that the vouchers are in respect of misc expenses and nowhere contains the name of the claimant. Similarly, the documents marked as exhibit WW1/2 are the copies of the register claimed to contain hand writing of the claimant. The handwriting having not been proved, claimant can't claim benefit of those documents.

True, the vouchers and copies of the registers don't contain the name of the workman to aid his statement that he had worked for more than 240 days for the management in a calendar year. The law is well settled that the onus lies with the workman to prove that he had worked for 240 days or more for the management in a calendar year to become entitled to the benefits of section 25-F,Gand H of ID Act. In the case of **Batala Cooperative Sugar Mills limited vs. Sowaran Singh reported in (2005) 8SCC 481** and also in the case of **Director Fisheries terminated Division vs. BhikubhaiMeghajibhai Garda reported in (2012)1SCC47**, the Hon'ble Supreme Court have held that evidence to prove 240 days work can be laid on record by producing engagement/ appointment letter or by producing receipt or payment of wage for 240 days.

Admitted the documents marked as exhibit WW1/1 and Exhibit WW1/2 don't disclose about payment of wage or salary to the claimant for the relevant period. It is the case of the claimant that he was not given any appointment letter. On the contrary management has not denied the engagement of the claimant in the Bank but with a plea that his engagement was on need basis, and made intermittently on daily wage basis. MW1, the General Manager (HR) of the Bank during his examination was confronted with a document of the Bank by the claimant, which has been marked as MW1/W1. This is an inter office memorandum of the Bank dated 31.03.1999. This document created during an undisputed point of time contains admission of the bank with regard to engagement of the claimant as a daily wage casual worker since 11.01.1993 and due to shortage of staff, he, vide, this order dated 31.03.1999 was assigned the additional duty of DafteryRoom. This document, thus clearly proves that the claimants started working for the management since 11.01.93 as a casual worker. His oral evidence with regard to his cessation of work in 2008 has not been controverted by the management. Hence it is held that the claimant has successfully proved that he completed 240 days of work in a calendar year and thus entitled to the benefits of section 25-F,G,H of ID Act.

It may be mentioned that the provisions of section 25-F of the Act which provides the conditions precedent to retrenchment of a workman are absolute and inexorable and reads as under

“25-F: conditions precedent to retrenchment of workmen-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until_

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period.
- (b) The workman has been paid, at that time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed years of continuous service or any part thereof in excess of six months and
- (c) Notice in the prescribed manner is served on the appropriate government or such authority as may be specified by the appropriate government by notification in the official gazette.”

The above provision makes it clear that the employer is required to give notice to the appropriate government apart-from giving one months notice in writing or one month wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the management has violated the provisions of section 25-F of the Act.

There is a long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of section 25-F of the Act will render action of the management illegal and void under the law.

Since there is no evidence on record that any valid notice was issued by the management to the workman at that time of termination or in lieu of such notice, any compensation was paid to him, such action of the management in terminating the services of the workman w.e.f. 23.04.2008 is held to be illegal and void.

Point No. (b)

Once it is held that the claimant/workman was terminated illegally, the next important issue to be decided is to what relief he is entitled to.

"Hon'ble Apex Court in the case of **General Manager, Haryana Roadways vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under:-

"8. There is no rule of thumb that in every case where the industrial Tribunal gives a finding that the termination of service was in violation of section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighted and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which out experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

In this case the claimant has all along pleaded that the Bank having vacancy in the permanent post of Safaiwala never considered his candidature and Unfair Labour Practice was meted to him on account of his illegal termination. Extensive argument was advanced on his behalf to the effect that a person much junior to him was appointed but he was not even called for the interview. This aspect of the argument cannot be considered within the scope of the reference received from the Appropriate Government which is specific about the legality of the termination and the relief admissible to the claimant. It is of course the claim of the claimant that he should be reinstated to service with all back wages. But as discussed in the preceding paragraph the claimant has not laid any evidence to convince this tribunal that there still exist any vacancy with the bank for his reinstatement and continuance as a permanent Safaiwala. As per the bipartite settlement placed on record a person is eligible for that post provided he has the qualification of 8th standard pass for general and OBC category and fix standard pass for SC,ST category candidates. Not only that as per the terms of the said settlement the casual workers must be within the upper age limit of 26 years relaxable by the Number of years work, subject to maximum of 45 years as on 07th May 2012. The claimant has not adduced any evidence at all about his qualification, age and the existence of the vacancy for consideration of his prayer for reinstatement and absorption.

In the case of **Hari Nandan Prasad vs. Food Corporation of India (2014) 7 SCC190**. It was observed by the Apex Court as under:-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of section 25-F although may be set aside but an award of reinstatement should not, however automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wager has not been found to be proper by the supreme Court an instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post of a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of nonpayment of under section 25-F of the Industrial dispute Act,

even after reinstatement it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

Thus, on careful perusal of the oral and documentary evidence adduced by the parties and the principles decided in the above discussed judicial pronouncement and considering the length of service rendered by the claimant, this tribunal considers that for the illegal termination of the workman a compensation of Rs. 300,000/- shall be paid to the workman by the management Bank which will be just and reasonable in the circumstances of this case. Hence, ordered.

ORDER

The reference be and the same is answered in the favour of the claimant. The termination of the engagement of the workman by the management Bank is held to be illegal. The Bank is directed to pay a compensation of Rs. 3,00,000/- to the workman which will meet the ends of justice. The management is further directed to pay the amount within 3 months from the date of publication of the award failing which the workman shall be entitled to interest on the said amount @ 9% per annum from the date when the amount is payable i.e. on completion of 3 months from the date of the publication of the award till final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2077.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 66/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.11.2019 को प्राप्त हुआ था।

[सं. एल-12012/113/2003-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 25th November, 2019

S.O. 2077.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2003) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court*, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 25.11.2019.

[No. L-12012/113/2003-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 15TH NOVEMBER 2019

PRESENT : JUSTICE SMT.RATNAKALA, Presiding Officer

CR 66/2003

I Party

Sh. Chandrasekhar K Benakatti,
R/o Chikka Assangi,
Basvanna Bagewadi Taluk,
Bijapur District - 586 203.

II Party

The Deputy General Manager,
Bank of Baroda,
41/2, MG Road, Trinity Circle,
BANGALORE - 560 001.

Appearance

Advocate for I Party : Mr. N. S. Narasimha Swamy

Advocate for II Party : Mr. Udayashankar Rai

AWARD

The Central Government vide Order No. L-12012/113/2003-IR(B-II) dated 20.11.2003 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Vijaya Bank in removal of Shri C.K. Benakatti from service vide order dated 29.05.2001 is legal and justified? If not, what relief is the workman entitled?”

1. The 1st Party workman is the former employee of the erstwhile Vijaya Bank which is now amalgamated with Bank of Baroda.

2. The fact is,

the 1st Party workman joined the 2nd Party as a Peon on 01.05.1982 and was promoted to the post of Clerk w.e.f 15.07.1995; he was issued charge sheet dated 17.07.2000 on the allegations of unauthorised absence; after holding Departmental enquiry he was removed from service.

3. 1st Party contends that due to the death of his Wife and also his medical condition he did not reply the charge sheet; enquiry notice was not issued to him, later he learnt that he was placed ex-parte in the enquiry; without providing him sufficient opportunity to defend himself against the charges the Enquiry Officer placed him ex-parte. The 2nd Party has not followed the due procedure prescribed under law before passing the order of removal. The report of the Enquiry Officer is not based on the evidence on record; the punishment imposed on him is disproportionate to the gravity of charges levelled against him.

4. 2nd Party in their statement counter claimed their action as proper, legal and justified, it was contended that he is an habitual absentee; on earlier two occasions charge sheet was issued and he was imposed punishment of Censure by Disciplinary Authority vide order dated 21.09.1994 and stoppage of one increment temporarily for a period of one year vide order dated 24.06.1999; the number of days of leave on loss of pay / unauthorised absence till 31.12.1999 was 881 days; enquiry notice was served on him but he did not choose to attend the enquiry; the Enquiry Officer after proper analysis of evidence held all the three charges levelled against him as proved. Considering the enquiry finding and his past record, the Disciplinary Authority proposed to impose the punishment of Removal from Service of the Bank with superannuation benefits as would be due otherwise at the stage and without disqualification for future employment. 1st Party though acknowledged the letter of the Disciplinary Authority failed to submit his reply; the Disciplinary Authority vide order dated 29.05.2001 confirmed the proposed punishment.

5. On therival pleadings touching the fairness of

Domestic Enquiry an issue was raised and answered holding that *the Domestic Enquiry conducted against the 1st Party is fair and proper.*

6. The 1st Party workman thereafter adduced evidence that he is unemployed and has the burden of raising two sons.

7. The allegation in the charge sheet of 17.07.2000 is to the effect that he is an habitual absentee and remains unauthorisedly absent for prolonged periods; he has already availed 354 days leave on loss of pay till March 1999; he was issued two charge sheets on earlier occasions for remaining absent from duty unauthorisedly and on both occasions he was imposed punishments and also advised not to repeat such or similar misconduct. Still he has repeated the same.

He remained absent from 02.08.1999 to 22.11.1999 for 113 days and submitted leave application dated 22.11.1999 with the medical certificate of 20.11.1999; he remained absent from 21.02.2000 to 08.04.2000 for 48 days and submitted leave application on 10.04.2000 with the medical certificate dated 07.04.2000, thus he remained unauthorisedly absent for 161 days. The charge sheet further details the action taken by the 2nd Party against him and the undertaking given by him etc.

8. During the Domestic Enquiry the management examined one witness and produced the original Attendance Register and Leave Record for perusal of the Enquiry Officer. The Leave Applications, Medical Certificates, the Reports of the concerned Branch on his unauthorised absence and the Call Notices were marked as Ex M-1 to Ex M-13. In the absence of anything contrary, the finding of the Enquiry Officer found him guilty of all the three charges.

9. It is also from record that 1st Party though acknowledged receipt of the enquiry finding did not submit his remarks, he also did not respond to the proposed punishment. The Disciplinary Authority vide proceedings dated 29.05.2001 accepted the enquiry notice considered the past records of the workman highlighting his habitual absenteeism

imposed the punishment. The Apex Court in its judgment reported in (2014) 4 SSC 108 in the matter of Chennai Metropolitan Water Supply and Sewerage Board and others vs T T Murali Babu, condemned the act of unauthorised absence for a long period with inadequate reason, showing indiscipline and also making an attempt to get away with it.

10. The punishment order against which the dispute cannot be branded is not too harsh or severe since it does not seize his future employment or his entitlement for superannuation benefits. There is nothing to find flaw on the legality or justifiability of the punishment order.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 15th November, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 26 नवम्बर, 2019

का.आ. 2078.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 41/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2019 प्राप्त हुआ था।

[सं. एल-12012/113/2002-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 26th November, 2019

S.O. 2078.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2002) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bangaloreas* shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 26.11.2019.

[No. L-12012/113/2002-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 22ND OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

C R 41/2002

I Party

Sh. Abdul Hameed,
Since deceased by his LRs

1a) Smt. Mumtaz Begum,
W/o Late Sh. Abdul Hameed,
R/o H. No.1-960/2
TAR File, Opp. Railway Station.
Kalaburagi – 585101.

1b) Sh. Abdul Saleem,
S/o Late Sh. Abdul Hameed,
R/o H. No.1-960/2
TAR File, Opp. Railway Station.
Kalaburagi – 585101.

1c) Ms. Ghousia,
D/o Late Sh. Abdul Hameed,
R/o New Bank Colony,

II Party

The Asst. General Manager,
State Bank of India, Region-1,
Zonal Office, PB No. 48 Super Market,
Gulbarga (Karnataka) – 585101.

Bilalabad, Kalaburagi - 585 104.

1d) Ms. Najma Begum,
D/o Late Sh. Abdul Hameed,
R/o H.M. Tailors, Mahagaon,
Humnabad Road,
Tq & Dist. Kalaburagi - 585 316.

1e) Ms. Shaja Begum,
D/o Late Sh. Abdul Hameed,
R/o H.M. Automobiles,
Charminar, Hyderabad - 500 002.

1f) Ms. Rafiya Begum,
D/o Late Sh. Abdul Hameed,
R/o Santraswadi,
Kalaburagi - 585 104.

1g) Ms. Asara Begum,
D/o Late Sh. Abdul Hameed,
R/o H. No.1-960/2
TAR File, Opp. Railway Station.
Kalaburagi – 585101.

1h) Sh. Mohd. Rafiq,
S/o Late Sh. Abdul Hameed,
R/o H. No.1-960/2
TAR File, Opp. Railway Station.
Kalaburagi – 585101.

Appearance

Advocate for I Party : Mr. Muralidhara
 Advocate for II Party : Mr. N. Venkatesh

AWARD

The Central Government vide Order No.L-12012/113/2002-IR(B-I) dated 12/08/2002 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of management of State Bank of Hyderabad is justified in imposing the punishment of “Discharge from Service” though the applicant workman Shri Abdul Hameed has made good the amount in all the cases? If not what relief the workman is entitled?”

1. The claim is raised by the dismissed employee of the 2nd Party (erstwhile State Bank of Hyderabad presently State Bank of India). The 1st Party workman claimed that he joined the service of the 2nd Party erstwhile State Bank of Hyderabad as a Peon in the year 1972, he was issued charge sheet dated 20.09.1991 on certain allegations. He suitably replied to the said charge sheet denying the charges. The Management initiated disciplinary proceedings and held Domestic Enquiry. The Enquiry Officer held that out of 11 charges Charge No. 1 and 2 partly proved and Charge No. 3 and 4 are not proved and remaining charges are partially proved. On receipt of the enquiry report the 2nd Party dismissed him vide order dated 26.08.1993. His appeal to the Appellate Authority against the punishment order did not survive. The Enquiry conducted against him was without providing sufficient opportunity to defend himself against the charges. The enquiry report is without clear analysis of the evidence, the conclusion is erroneous etc.

2. The claim was contested by his employer (erstwhile State Bank of Hyderabad) justifying their action of dismissal. They denied the allegations levelled in the claim statement against the procedure of enquiry and also the enquiry report. Based on the rival pleadings touching the procedure of enquiry this Tribunal framed Preliminary Issue. After a full pledged trial the issue is answered against the management, holding that the Domestic Enquiry conducted against the workman is not fair and proper.

3. Since, the 2nd Party had not reserved liberty to prove the charges afresh before this Tribunal, Award came to be passed directing the 2nd Party Management to reinstate the workman with full back wages etc. The 2nd Party filed an application in Miscellaneous No. 06/2007 seeking to recall the Award and restore the case. The application was rejected by my learned predecessor.

Aggrieved 2nd Party Management challenged the Award so also the order passed in Miscellaneous No. 06/2007 before the Hon'ble High Court in Writ Petition No. 3352/2008 (L-TER). By that time the workman since was deceased his class-I legal heirs were arrayed as respondents in the Writ petition. The Hon'ble High Court allowed the writ petition on following terms:

10) *Petition stands allowed. Award passed in C.R.No.41/2002 dated 17.09.2007/26.09.2007 Annexure-L and Order dated 06.02.2008 passed in Misc No.6/2007 Annexure-N are hereby set aside.*

11) *The CGIT is hereby directed to make necessary endeavour to decide C.R.No.41/2002 within a period of four months from the date of receipt of copy of this order.*

Parties are hereby directed to co-operate in deciding the matter.

4. After remand the Sh. MD filed power for legal heirs of the deceased workman, argument was advanced by sh. MD and also by Sh. NV for the respondent management. In the interregnum period the erstwhile State of Hyderabad under whom the deceased workman had served amalgamated with the State Bank of India and now is State Bank of India. Vide order dated 15.09.2019 Preliminary Issue is answered in the negative against the 2nd Party Management.

5. It is to be noted that the 2nd Party no-where had sought permission to adduce evidence on merit, to prove their charge against the deceased workman, in the event the Domestic Enquiry is held not fair. It was not pleaded so in the statement filed by them at the inception. They had another opportunity before the Hon'ble High Court to make a prayer for permission to adduce evidence in support of the charges. No application is filed by them before this Court after the order on Preliminary Issue was pronounced by me on 15.10.2019. Instead Sh. NV for the 2nd Party has submitted his argument in writing along with authorities on the merits of the case. But his written argument cannot be counted upon for the simple reason that the Domestic Enquiry which preceded the punishment order is held not fair and proper and the finding of the Enquiry Officer consequently is a nullity. The eventuality is, the punishment of dismissal imposed on the workman on the basis of the enquiry report is now a non est order. Had if the workman was alive he would have been entitled for reinstatement with a justifiable amount of monetary compensation towards his back wages. Since the workman is no more, a monetary compensation proportionate to his back wages from the date of dismissal to the date of his superannuation is the appropriate relief for his legal heirs.

6. It is noticed from the copy of the orders in W.P No. 3352/2008 (L-TER) that his widow and 7 children were arrayed as respondents out of them his widow Smt. Mumtaz Begum and his first son Sh. Abdul Saleem were represented through their counsel, for others notice was served / held sufficient. After remand no application is filed to bring the legal heirs on record in the place of the deceased workman. However, to accomplish the ends of justice being met, office is directed to carry out amendment to the cause title by bringing the legal heirs of the deceased Abdul Hameed in the cause title. Since all the children are majors, I am of the considered opinion that the monetary relief for which the legal heirs are entitled in lieu of settling aside of the punishment order shall be paid to Smt. Mumtaz Begum Wife of late Abdul Hameed.

AWARD

The reference is accepted

The action of the Management of State Bank of Hyderabad in imposing the punishment of discharge from service is not justified hence the said punishment order is set aside, directing the 2nd Party to pay back wages from the date of his dismissal to the date of his superannuation at the rate of his last drawn pay to Smt. Mumtaz Begum wife of late Sh. Abdul Hameed on proper identification, within 2 months from the date of publication of the Award in the Official Gazette.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 22nd October 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 26 नवम्बर, 2019

का.आ. 2079.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधित बैंक के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 51/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2019 प्राप्त हुआ था।

[सं. एल-12012/103/2005-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 26th November, 2019

S.O. 2079.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2005) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 26.11.2019.

[No. L-12012/103/2005-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 30TH OCTOBER 2019

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

C R 51/2005

I Party

R. Venkatesh Murthy,
S/o J. Ramaiah,
Since deceased by his LRs

1a)	Smt. Sonnamma, W/o Late R. Venkatesh Murthy,	II Party The General Manager (IR), State Bank of India, Local Head Office, St. Marks Road, Church Street, Bangalore - 560 001.
1b)	Sh. Manjesh Kumar, S/o Late R. Venkatesh Murthy,	
1c)	Ms. Shashikumari D/o Late R. Venkatesh Murthy,	

All residing at Kaladevanahalli
Thoobugere Hobli & Post,
Doddaballapura Taluk,
Bangalore Rural District.

Appearance

Advocate for I Party : Mr. B.D. Kuttappa

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12012/103/2005-IR(B-I) dated 21.11.2005 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the management of State Bank of India is justified in discharging Shri R. Venkatesh Murthy, messenger, from the services of the Bank with effect from 12.12.2003. If not, what relief he is entitled to and from which date?”

1. The dispute was raised by R. Venkatesh Murthy Ex-employee of the 2nd Party Bank. During the pendency of the proceedings before this Tribunal the workman expired and his legal heirs are on record.

2. It is the admitted fact that the deceased was working as a Messenger in the 2nd Party, he was issued 2 charge sheets dated 09.04.2003 and 25.04.2003, both on the allegations of unauthorised absence. Domestic Enquiry was held on the charges and the Enquiry Officer on conclusion of enquiry held him guilty of the charges. Acting on the enquiry report the 2nd Party dismissed him from service.

3. In his claim statement the 1st Party workman questioned the fairness of the Domestic Enquiry and also reasonableness of the enquiry report. He also contended that without issuing second show cause notice and without calling upon for his explanation to the proposed punishment, the order imposing punishment of dismissal is liable to be set aside. The 2nd Party without considering his past records and without application of mind has imposed punishment on him which is disproportionate to the alleged charges. He is unemployed and has the responsibility to maintain his dependent family.

4. The 2nd Party in their counter statement contended that he remained unauthorisedly absent from 13.02.2003 to 07.04.2003 (54 days) and was issued charge sheet dated 09.04.2003 another charge sheet dated 25.04.2003 was issued in respect of his unauthorised absence for 16 days. In respect of a charge sheet dated 26.02.1998 for unauthorised absence from 05.02.1996 to 05.03.1997 (one year one month) he was imposed punishment of stoppage of seven increments with cumulative effect vide order dated 13.09.2000. The punishment was reduced to stoppage of three increments with cumulative effect, by the Appellate Authority. Again, in the year 2002 for his unauthorised absence, after holding enquiry, he was imposed punishment of stoppage of one increment with cumulative effect. But he continued to remain unauthorisedly absent; the charge sheet was issued and the Domestic Enquiry was conducted in accordance with the procedure and law, by providing him reasonable opportunity. After the enquiry report was submitted same was forwarded to him, neither he was attending the office nor he was available at the resident, when the Branch Manager Bashettahalli Branch had tried to serve him personally. Hence, enquiry report was sent to him through RPAD, all the communication sent to him returned undelivered. The order of punishment was also published in two News Papers on 26.12.2003. The punishment order was confirmed by the Appellate Authority. He is not entitled for any relief.

5. Heard both learned counsels.

6. On the rival pleadings taken by both parties regarding the fairness of Domestic Enquiry a Preliminary Issue was framed tired and adjudicated after a full pledged trial by upholding the fairness and procedure of the Domestic Enquiry.

7. Perused the enquiry records. The CSE actively

participated in the enquiry along with his Defence Representative. Two witnesses were examined for the management. PW-1 was the Branch Manager of Bidadi Branch who substantiated the allegations that the CSE remained absent from 13.02.2003 to 07.04.2003. Through her leave register and attendance register maintained in the Branch for the period 13.02.2002 to 24.04.2003 pertaining to the 1st Party were marked. The second witness was the then Deputy Manager who stated that 1st Party was marked absent from 13.02.2002 to 03.06.2003 since he remained absent without permission or information. He further stated that no entry is made in the leave register pertaining to the 1st Party for the period 13.02.2002 to 23.04.2003. He further deposed that on 31.03.2003 an entry is made stating that CSE has not reported to duty from 13.05.2003 without submitting leave letter or oral instruction and suffered loss of pay from 13.02.2003 to 03.06.2003. He also deposed that the CSE was absent from duty for about 6 months prior to the period mentioned in the charge sheet. It was brought out during the cross examination of PW-2 that no call notice was sent to him. When confronted with a copy of the leave letter submitted by CSE for the period 13.02.2003 to 15.02.2003 he admitted the same.

8. The defence was, he had submitted leave application and the Competent Authority had sanctioned leave for some period. As per his leave application DEX-3 he had requested leave for a period from 13.02.2003 to 15.02.2003. His name has not appeared in DEX-1, the absentee register maintained in the Branch; there is no practice of informing the sanction of leave or otherwise, whenever the employee applies for leave. It was not an unauthorised absence since he had informed the Branch Manager about his absence; his absence has to be treated as leave on loss of pay but not as unauthorised.

9. The Enquiry Officer though finds that he had applied for leave for the period 13.02.2003 to 15.02.2003 which was partly covered in the charge sheet, still held that his unauthorised absence from 08.02.2003 to 24.03.2003 as per the charge sheet dated 24.05.2003 stood proved. With regard to the contention of not making entry in the absentee register and not sending notices were observed as procedural lapses on the part of the Branch Manager not diluting the seriousness of the charge.

10. Since, there was no documentary proof about the sanction of leave for the period 13.02.2003 to 15.02.2003 the Enquiry Officer concluded that his unauthorised absence of 54 days from 13.02.2003 to 07.04.2003 as per charge sheet dated 09.04.2003 and unauthorised absence for 16 days from 08.04.2003 to 23.04.2003 vide charge sheet dated 25.04.2003 is proved.

11. The 2nd Party has produced the copy of the punishment order imposing the punishment of “Be discharged from service with superannuation benefits i.e. Pension and /or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment” vide para (6)(d) of Bipartite Settlement dated 10.04.2002 read in conjunction with para 521 of Sastry Award and 18.28 of Desai Award. “The entire period of unauthorised absence is treated as not accounted for service”.

12. It is obvious that no effort was made by the 1st Party during the enquiry; he had valid reasons to remain absent and get leave sanctioned from the Disciplinary Authority about bona fides of his absence. He is a habitual absentee and was previously punished twice. The very fact that he was not available for service of the punishment order and same had to be published in a News Paper and further failed to prefer an appeal within stipulated time probabalises that he was not punctual. Hence, the punishment order discharging him with service benefits is proportionate to the gravity of the misconduct not warranting exercise of the jurisdiction of sec 11-A of the Industrial Dispute Act in his favour. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 30th October 2019)

JUSTICE Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 26 नवम्बर, 2019

का.आ. 2080.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रगती ग्रामीण बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 12/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2019 प्राप्त हुआ था।

[सं. एल-12012/32/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 26th November, 2019

S.O. 2080.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2011) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore* as shown in the Annexure, in the industrial dispute between the management of Pragathi Grameena Bank and their workmen, received by the Central Government on 26.11.2019.

[No. L-12012/32/2010-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 18TH SEPTEMBER 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 12/2011

I Party

Sh. T.M. Pranesh (1034),
 S/o Late Madhava Rao,
 Anganadri Nilaya,
 S.B.H. Colony, Lingasugur,
 Raichur - 584122,
 Karnataka.

II Party

The Chairman,
 Pragathi Grameena Bank,
 Head Office, Gandhi Nagar,
 Bellary - 583103,
 Karnataka.

Appearance

Advocate for I Party : Mr. C.R. Patil

Advocate for II Party : Mr. N. Srinivas Rao

AWARD

The Central Government vide Order No. L-12012/32/2010-IR(B-I) dated 07.04.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Pragathi Grameena Bank in imposing the penalty of removal from services on Shri T.M. Pranesh (1034) S/o Late Shri Madhav Rao, Ex-Clerk-cum-Cashier, Pragathi Bank, Gurgunta Branch, vide their order dated 24.08.2009, is legal and justified? To what relief the workman is entitled?”

1. This is a claim by a workman/EX- Employee of the Bank who is removed from service w.e.f 24.08.2009. During the pendency of the reference before this Tribunal, he expired and his wife and children are brought on record.

The undisputed facts are, the 1st Party workman joined the Bank on 01.12.1984 as a Clerk cum Cashier and served at various branches for 25 years. In respect of the incident of 04.11.2008 he was issued Charge Sheet dated 05.01.2009. During the enquiry, the workman unequivocally accepted the allegations and explained the circumstances that prevailed on him. The Enquiry Officer submitted his report holding that the charges are proved. The Disciplinary Authority proposed the punishment of removal from service, which shall not affect his further employment. After a personal hearing the punishment order dated 24.08.2009 ‘removal of service which shall not be a disqualification for further employment’ under Regulation 38(b)(v) of Pragathi Grameena Bank (Officers and Employee) service regulation 2005 was passed. His appeal on the Punishment Order did not survive.

2. In the Claim statement the 1st Party workman had contended that, he was unable to refute the charges due the indisposition of himself, serious illness of his aged Father and also his death. He was coerced to accept the charges. With a hope that the Bank would excuse his mistakes and would not harm his service he made honest representation to the Enquiry Officer.

3. The 2nd Party contested the claim on the ground,

that on receipt of the Charge Sheet he submitted his reply dated 30.07.2009 and admitted the allegation unequivocally pertaining to the Charge Sheet allegations; he confirmed his allegation of guilt before the Investigating Officer on 13.11.2008. In his reply to the Show Cause notice dated 23.08.2008, he prayed to condone his actions; notwithstanding his admission Enquiry Officer and Presenting Officers were appointed. At the beginning of the enquiry itself he accepted the charges categorically, the Management examined two witnesses and produced 23 documents, in the presence of the 1st Party workman the Enquiry Officer on the basis of the admission of the 1st Party and also evidence brought on record submitted his finding on 24.04.2009 holding him guilty of the charges. In his reply to the Enquiry report he has stated that, he had nothing to say for the matter and requested for condoning his actions. The misconduct of misappropriation of Customer’s money, making fraudulent entries in the pass book of the Customer is proved. He has betrayed the trust reposed by the 2nd Party on him, his caution amounts to moral turpitude and lack of integrity.

4. The allegation against the workman was,

‘On 04.09.2008, while working at Gurugunta Branch M/s. Raghavendra Brandy Shop, Gurugunta a Customer of the Branch remitted Rs. 94,390/- (Ninety Four Thousand Three Hundred and Ninety Rupees) to the credit of their Account No. 20, the 1st Party workman accepted the cash, issued Counter Foil, duly affixing the cash received seal and made entry in the Pass Book. He did not account the money in the books of accounts of the Bank and misappropriated the same. Subsequently, he confessed the misappropriation and made good the amount on 28.10.2008. The above conduct is in contravention of Regulation 7 &19 of Pragathi Grameena Bank (Officers and Employees) Service Regulation 2005, punishable under Regulation 38 (ii) (b) of the said Service Regulation’.

Not only that the 1st Party admitted the allegations in his reply to the Charge Sheet but also before the Enquiry Officer at the stage of preliminary hearing. Still, the Management placed its evidence by examining two witnesses. The first witness was the Customer / Complainant whose money was misappropriated. The second witness was the Manager of

the Bank, through him 12 documents like Statement of the Customer, his Pass Book, Counter Foil, Office Challan dated 04.09.2008, the Report of the Manager, the reply letter of the 1st Party to the Show Cause notice, the Statement pertaining to Current Account of the Customer for relevant period, Attendance sheet for relevant period and Cash Receipt scroll were marked. Naturally that led the Enquiry Officer to return his finding that the 1st Party is guilty of charges levelled against him.

Subsequent to recording of the finding on the Preliminary Issue the 1st Party workman adduced evidence before this Court stating that, he was compelled by the Management to admit the charges with a promise that his future will not be affected. Believing the said words, he admitted the charges of misappropriation but the Management did not keep up its promise that amounts to victimisation. The Management failed to consider the circumstances which forced him to commit the act.

5. In the written argument submitted on the behalf of the 1st Party, monetary compensation is sought in accordance with the Judgement passed by Hon'ble High Court in a Writ Petition filed against the Award passed by this Tribunal. In the said case, the allegation was of fraudulent withdrawal by the employee of the Bank. Another reported Judgement of our Hon'ble High Court in W.P 1167/79 is also relied. In the said case the allegation was of unauthorised absence, the Hon'ble High Court observed that the Tribunal failed to consider the relevant evidence and the circumstances were not considered. The Writ petition was against the order passed by this State Industrial Tribunal in a Complaint filed by the workman against the Management. The facts and circumstances in the case on hand stand distinguished from that of the above cases. The allegation of misconduct of the Bank's money amounting to Rs. 94,390/- (Ninety Four Thousand Three hundred and Ninety Rupees) is proved, not only during the Domestic Enquiry but also on the admission of the misconduct by the employee himself. The Bank handling the Public money is a trustee of the Public property and even a small breach of rules and procedure by its employees will deter the confidence of the Public with the Banking Institution. Deviation in the conduct of the employee, will demoralise his colleagues also. In the given circumstances it is not in the fitness of things to have continued him in service. However, having regard to his earlier service of 25 years, removal from service was on higher side. Compulsory retirement from service with all service benefits would have been the appropriate punishment to balance the gravity of misconduct proved against the 1st Party workman. It is on record that all his children are majors. Hence, monetary benefits if any that may arise from the modified order of compulsory retirement shall be paid to his wife Smt. Kalavathi.

AWARD

The reference accepted

The action of the 2nd Party/Management of Pragathi Grameena Bank in imposing the penalty of removal from service on the 1st Party workman Late. Sh. T.M. Pranesh is not justified. The Punishment Order is modified to the effect that the 1st Party shall be treated as compulsorily retired from service w.e.f 24.08.2009. Any monetary benefit arising out of the modified Punishment Order shall be paid by the 2nd Party to the Wife of 1st Party workman Smt. Kalavathi forthwith.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 18th September, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 26 नवम्बर, 2019

का.आ. 2081.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटका ग्रामीण बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 25/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2019 प्राप्त हुआ था।

[सं. एल-12012/31/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 26th November, 2019

S.O. 2081.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore* as shown in the Annexure, in the industrial dispute between the management of Karnataka Gramina Bank and their workmen, received by the Central Government on 26.11.2019.

[No. L-12012/31/2013-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 13TH SEPTEMBER 2019**PRESENT :** Justice Smt. Ratnakala, Presiding Officer**CR 25/2013****I Party**

Sh. Niranjanappa,
 S/o Sh. Hanumanthappa,
 Hochihalli, Hochihalli Post,
 Kadur Taluk,
 Chikmagalur District - 573 132.

II Party

The Chairman,
 Karnataka Gramina Bank,
 Head Office, CA No. 20,
 Vijayanagar 2nd Stage,
 Mysore - 570 017.

Appearance

Advocate for I Party : Mr. H. K. Nagabhushana

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12012/31/2013-IR(B-I) dated 07.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management in denying regularization to Sri Mallikarjunaiah K.R for the post of sweeper-cum-messenger is legal and justified? If not, to what he is entitled?”

1. The case of the 1st Party is, that his candidature was sponsored by the District Employment Exchange in the year 1992 for the post of Messenger cum Sweeper in the Kunkanadu Branch of the 2nd Party; he approached the 2nd Party Management and was issued letter of temporary appointment dated 24.08.1992 as Messenger cum Sweeper, thereafter he has been transferred from one place to another and he is working without any break. He sought for regularisation of his service during the year 2008; the 2nd Party issued an endorsement to the effect that his application will be considered as and when vacancy arises; between the year 2000-2006 on the Award passed by this Tribunal some of the employees were reinstated and their service is regularised. On the basis of the Award he approached the 2nd Party for regularisation of his service but same is not considered so far. They have violated Schedule V of the Industrial Dispute Act and adopted unfair labour practice. His wages are enhanced from Rs. 30/- per day to Rs. 280/- per day and is paid on monthly basis. Presently the Administration of the Bank is taken over Chikkamagalur Kodagu Gramina Bank and called as Kaveri Grameena Bank.

2. The 2nd Party Kaveri Grameena Bank during the pendency of proceedings amalgamated with Pragathi Krishna Gramina Bank and now called Karnataka Gramina Bank vide extraordinary Gazette notification dated 22.02.2019 w.e.f 01.04.2019. The cause title of the claim petition is amended accordingly.

3. The 2nd Party / Kaveri Grameena Bank in its counter statement contended that 1st Party was selected as temporary part time Messenger cum Sweeper at Kunkanadu Branch of a Chikmagalur Kodagu Gramina Bank on 24.08.1992 after an interview on 13.08.1992. His engagement was against the leave vacancy as and when it arose and it was purely on contractual basis for a fixed period. His employment not being of permanent nature, the action in not considering his request for permanent employment is legal and justified. At no point of time it is agreed to absorb him for a permanent post.

4. It is further stated that the erstwhile 2nd Party Kaveri Grameena Bank is a Regional Rural Bank established under Regional Rural Bank 1976; the erstwhile Chikmagalur Kodagu Garmina Bank, Vishvesharaiah Grameena Bank and Cauvery Kalpathru Grameena Bank amalgamated in terms of Government of India notification dated 01.11.2012

and a new entity was formed. There is no policy of recruiting the Messenger cum Sweeper in the Bank as and when required, the services of a casual labour is engaged on the temporary basis for the purpose. There is no post of Messenger cum Sweeper in the Bank. 1st Party was irregular in performing his duties as a part time temporary Messenger cum Sweeper; he has not completed 240 days of continuous service within the meaning of section 25(B) of the Industrial Dispute Act. On the representation submitted by him during 2008 he was informed that his request could not be considered and whenever any such vacancy arise subject to fulfilment of all eligibility norms of the 1st Party his confirmation would be considered. The recruitment for the post sought by the 1st Party has not taken place in the Bank and his request could not be considered. If the Bank assumes such a vacancy 1st Party will not be automatically eligible for recruitment on permanent basis. In view of the Ban by Government of India they could not initiate the process of recruitment in any cadre / category except on compassionate ground during the period.

5. Both parties have adduced their evidence reiterating their stand. Written arguments are submitted by both.

6. On behalf of the 2nd Party Chief Manager (P) Officiating Kaveri Grameena Bank was the witness; during his cross examination he admits in the year 2006 some Messenger who were ordered to be regularised by the Hon'ble Supreme Court were regularised in service; contribution from the wages of the 1st Party workman towards Provident Fund is deducted and is paid benefit bonus also.

During his rebuttal evidence 1st Party reiterated his claim statement averments by way of two affidavit evidence. Among other things he has produced his the documents pertaining to Appointment, P.F Subscription, Bonus, Attendance and Salary Slip which are all undisputed documents.

7. It is not the case of termination. Vide memo dated 03.07.2019 1st Party brought it on record that his service is continued without break and salary is paid by the present Management through Wage Bill Receipt. The point referred for adjudication presupposes that the 2nd Party has denied to regularise him for the post of Sweeper cum Messenger. But there is no evidence to the effect that at any time they have considered and denied for regularisation of the services of temporary workmen.

It is not in dispute that the 2nd Party which is formed under Regional Rural Bank Act of 1976; because of the ban imposed on recruitment by the Government of India, so far could not recruit any cadre / category except on compassionate ground. When there is no such vacancy of permanent Messenger cum Sweeper and no applications were called for by the 2nd Party to any permanent post, and the 1st Party is provided work with all statutory benefits, the reference was premature. A Photostat copy of the Common Award passed by this Tribunal in CR 13/2004 and 14/2004 dated 09.01.2006 is relied. The 1st Party is looking for Award for regularising his service as Awarded in that case. In the said case the point refereed for adjudication was "*Whether the action of the management of chikamagalur Kodagu Gramina Bank in not regularising the services of Sh.... Temporary Messenger cum Sweeper is legal and justified? If not to what relief the workman is entitled?*"

In the said case the Bank had contended that Government of India NABARD had imposed ban on recruitment of any employee on permanent basis but the 1st Party had counteracted that said ban is lifted by way of circular in the year 2004. The Award was passed on following terms "*the management is directed to regularise the services of the first party workmen on permanent basis to the post of Messenger cum Sweeper, if ban imposed by Government of India (NABARD) under the letter bearing reference No. NB: IDD: RRCBD: 1736: C-316 (Gen): 98-99 dated 19.09.1988 has already been lifted. In case the ban continues, their case for permanent post shall be considered on priority basis....*"

8. The question of the ban imposed by the NABARD which was subsequently withdrawn was not the issue in the present case. While directing the 2nd Party to regularise the service of the 1st Party, this Tribunal also awarded the alternative relief in the event ban is not lifted, thus directing the 2nd Party to treat the case of the 1st Party for permanent post on priority basis. Assuming for a while that the ban is lifted and the vacancies for permanent post are open; the appointment would be on the basis of eligibility criteria as undertaken by the 2nd Party as their response letter Ex W-3 given to the 1st Party workman. In the event of any violation by the 2nd Party of their undertaking given to the workman under Ex W-3 that shall entitle for the workman to seek redressal under the provisions of Industrial Dispute Act.

9. The 1st Party as placed reliance on the judgments passed by the Apex Court and the Hon'ble High Court, the judgment of the Apex Court in Food Corporation of India vs General Secretary, FCI India Employees Union and others, Civil Appeal No. 10499/2011, and Food Corporation of India vs The workmen through the Convener and another, the subject matter involved in this case pertains to regularisation of service of 955 employees employed by the contract labourers Society to work in FCI to carry out their Business. The Industrial Tribunal had passed Award by answering the reference in favour of the workers union and against the Corporation, it was held that 955 employees are entitled for regularisation of service. The said Award was upheld up to the Apex Court. The second case pertains to the

regularisation of service of 2007 contract employees working on short term contracts over 10-20 years, the Award passed by the Industrial Tribunal of Mumbai was confirmed by the Apex Court. Judgment of the Hon'ble Calcutta High Court reported in 2017 LLR 716 in the matter of SAIL vs workmen, SAIL and Others, is also about contract employment wherein it was asserted while sustaining the Award of the Industrial Tribunal that 'if the contract is declared to be sham, the employees of contractors would be treated as employees of the principle employer'. Next judgment relied is from that of the Apex Court in Civil Appeal No. 10956/2018 in the matter of Sabha Shanker Dube vs Divisional Forest Officer and Others and connected cases, it was a Writ Appeal arising from the orders passed by the Hon'ble High Court denying regularisation of services of the daily rated workers employed in group D posts of the Forest Department. The Division Bench of the Hon'ble High Court had dismissed the appeal. The Apex Court allowed the appeal to the extent that the Appellants are entitled to be paid the minimum of the pay scales applicable to the regular employees working on the same post. During the course of discussion at Para 11 it was clarified ".... we are not called upon to adjudicate on the rights of the Appellants relating to the regularisation of their services". The next judgment of the Apex Court relied pertains to the employees in Tiwari vs The State of Jharkhand dated 01.08.2018, the Writ Petitioners were daily wagers / contract workers appointed to different posts sought regularisation on the basis of provisions of Jharkhand Sarkar Ewam Karyarat Karmiyo Ki Sewa Niyamithikaran Niyamawali (Regularisation Rules).

10. None of the above judgments have semblance to the case on hand. It is an individual dispute seeking regularisation on the basis of the earlier award passed by this Tribunal which is already discussed in the preceding para.

11. In view of the observation supra I hold that the referred issue is premature. 1st Party workman since is working without break along with statutory benefits like, the Provident Fund facility and bonus, is not entitled for any relief in this reference.

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 13th September, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 26 नवम्बर, 2019

का.आ. 2082.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटक ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्यासेगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 26/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2019 को प्राप्त हुआ था।

[सं. एल-12012/32/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 26th November, 2019

S.O. 2082.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore* as shown in the Annexure, in the industrial dispute between the management of Karnataka Gramina Bank and their workmen, received by the Central Government on 26.11.2019.

[No. L-12012/32/2013-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 13TH SEPTEMBER 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 26/2013

I Party

Sh. Mallikarjunaiah K.R,
C/o K. R. Jayanna,
Kalledevarahalli,
Kunkanadu Post,
Kadur Taluk,
Chikmagalur District - 577 182.

II Party

The Chairman,
Karnataka Gramina Bank,
Head Office, CA No. 20,
Vijayanagar 2nd Stage,
Mysore - 570 017.

Appearance

Advocate for I Party : Mr. H. K. Nagabhushana

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12012/32/2013-IR(B-I) dated 07.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management in denying regularization to Sri Mallikarjunaiah K.R for the post of sweeper-cum-messenger is legal and justified? If not, to what he is entitled?”

1. The case of the 1st Party is, that his candidature was sponsored by the District Employment Exchange in the year 1992 for the post of Messenger cum Sweeper in the Kunkanadu Branch of the 2nd Party; he approached the 2nd Party Management and was issued letter of temporary appointment dated 24.08.1992 as Messenger cum Sweeper, thereafter he has been transferred from one place to another and he is working without any break. He sought for regularisation of his service during the year 2008; the 2nd Party issued an endorsement to the effect that his application will be considered as and when vacancy arises; between the year 2000-2006 on the Award passed by this Tribunal some of the employees were reinstated and their service is regularised. On the basis of the Award he approached the 2nd Party for regularisation of his service but same is not considered so far. They have violated Schedule V of the Industrial Dispute Act and adopted unfair labour practice. His wages are enhanced from Rs. 30/- per day to Rs. 280/- per day and is paid on monthly basis. Presently the Administration of the Bank is taken over Chikkamagalur Kodagu Gramina Bank and called as Kaveri Grameena Bank.

2. The 2nd Party Kaveri Grameena Bank during the pendency of proceedings amalgamated with Pragathi Krishna Gramina Bank and now called Karnataka Gramina Bank vide extraordinary Gazette notification dated 22.02.2019 w.e.f 01.04.2019. The cause title of the claim petition is amended accordingly.

3. The 2nd Party / Kaveri Grameena Bank in its counter statement contended that 1st Party was selected as temporary part time Messenger cum Sweeper at Kunkanadu Branch of a Chikmagalur Kodagu Gramina Bank on 24.08.1992 after an interview on 13.08.1992. His engagement was against the leave vacancy as and when it arose and it was purely on contractual basis for a fixed period. His employment not being of permanent nature, the action in not considering his request for permanent employment is legal and justified. At no point of time it is agreed to absorb him for a permanent post.

4. It is further stated that the erstwhile 2nd Party Kaveri Grameena Bank is a Regional Rural Bank established under Regional Rural Bank 1976; the erstwhile Chikmagalur Kodagu Garmina Bank, Vishvesharaiah Grameena Bank and Cauvery Kalpathru Grameena Bank amalgamated in terms of Government of India notification dated 01.11.2012 and a new entity was formed. There is no policy of recruiting the Messenger cum Sweeper in the Bank as and when required, the services of a casual labour is engaged on the temporary basis for the purpose. There is no post of Messenger cum Sweeper in the Bank. 1st Party was irregular in performing his duties as a part time temporary Messenger cum Sweeper; he has not completed 240 days of continuous service within the meaning of section 25(B) of the Industrial Dispute Act. On the representation submitted by him during 2008 he was informed that his request could not be considered and whenever any such vacancy arise subject to fulfilment of all eligibility norms of the 1st Party his confirmation would be considered. The recruitment for the post sought by the 1st Party has not taken place in the Bank and his request could not be considered. If the Bank assumes such a vacancy 1st Party will not be automatically eligible for recruitment on permanent basis. In view of the Ban by Government of India they could not initiate the process of recruitment in any cadre / category expect on compassionate ground during the period.

5. Both parties have adduced their evidence reiterating their stand. Written arguments are submitted by both.

6. On behalf of the 2nd Party Chief Manager (P) Officiating Kaveri Grameena Bank was the witness; during his cross examination he admits in the year 2006 some Messenger who were ordered to be regularised by the Hon'ble

Supreme Court were regularised in service; contribution from the wages of the 1st Party workman towards Provident Fund is deducted and is paid benefit bonus also.

During his rebuttal evidence 1st Party reiterated his claim statement averments by way of two affidavit evidence. Among other things he has produced his Appointment Orders on temporary basis, Wage Certificates.

7. It is not the case of termination. Vide memo dated 03.07.2019 1st Party brought it on record that his service is continued without break and salary is paid by the present Management through Wage Bill Receipt. The point referred for adjudication presupposes that the 2nd Party has denied to regularise him for the post of Sweeper cum Messenger. But there is no evidence to the effect that at any time they have considered and denied for regularisation of the services of temporary workmen. At Ex W-3 on the representation of the 1st Party dated 28.08.2008 requesting for regularisation of service he was informed “... we are unable to accede to your request for appointment as permanent Messenger cum Sweeper at present. However, your candidature will be considered as and whenever the vacancy arise subject to fulfilment of all eligibility norms by you for appointment for the post of Messenger cum Sweeper.”

It is not in dispute that the 2nd Party which is formed under Regional Rural Bank Act of 1976; because of the ban imposed on recruitment by the Government of India, so far could not recruit any cadre / category except on compassionate ground. When there is no such vacancy of permanent Messenger cum Sweeper and no applications were called for by the 2nd Party to any permanent post, and the 1st Party is provided work with all statutory benefits, the reference was premature. A Photostat copy of the Common Award passed by this Tribunal in CR 13/2004 and 14/2004 dated 09.01.2006 is relied. The 1st Party is looking for Award for regularising his service as Awarded in that case. In the said case the point referred for adjudication was “Whether the action of the management of chikamagalur Kodagu Gramina Bank in not regularising the services of Sh.... Temporary Messenger cum Sweeper is legal and justified? If not to what relief the workman is entitled?”

In the said case the Bank had contended that Government of India NABARD had imposed ban on recruitment of any employee on permanent basis but the 1st Party had counteracted that said ban is lifted by way of circular in the year 2004. The Award was passed on following terms “the management is directed to regularise the services of the first party workmen on permanent basis to the post of Messenger cum Sweeper, if ban imposed by Government of India (NABARD) under the letter bearing reference No. NB: IDD: RRCBD: 1736: C-316 (Gen): 98-99 dated 19.09.1988 has already been lifted. In case the ban continues, their case for permanent post shall be considered on priority basis....”

8. The question of the ban imposed by the NABARD which was subsequently withdrawn was not the issue in the present case. While directing the 2nd Party to regularise the service of the 1st Party, this Tribunal also awarded the alternative relief in the event ban is not lifted, thus directing the 2nd Party to treat the case of the 1st Party for permanent post on priority basis. Assuming for a while that the ban is lifted and the vacancies for permanent post are open; the appointment would be on the basis of eligibility criteria as undertaken by the 2nd Party as their response letter Ex W-3 given to the 1st Party workman. In the event of any violation by the 2nd Party of their undertaking given to the workman under Ex W-3 that shall entitle for the workman to seek redressal under the provisions of Industrial Dispute Act.

9. The 1st Party as placed reliance on the judgments passed by the Apex Court and the Hon'ble High Court, the judgment of the Apex Court in Food Corporation of India vs General Secretary, FCI India Employees Union and others, Civil Appeal No. 10499/2011, and Food Corporation of India vs The workmen through the Convener and another, the subject matter involved in this case pertains to regularisation of service of 955 employees employed by the contract labourers Society to work in FCI to carry out their Business. The Industrial Tribunal had passed Award by answering the reference in favour of the workers union and against the Corporation, it was held that 955 employees are entitled for regularisation of service. The said Award was upheld up to the Apex Court. The second case pertains to the regularisation of service of 2007 contract employees working on short term contracts over 10-20 years, the Award passed by the Industrial Tribunal of Mumbai was confirmed by the Apex Court. Judgment of the Hon'ble Calcutta High Court reported in 2017 LLR 716 in the matter of SAIL vs workmen, SAIL and Others, is also about contract employment wherein it was asserted while sustaining the Award of the Industrial Tribunal that ‘if the contract is declared to be sham, the employees of contractors would be treated as employees of the principle employer’. Next judgment relied is from that of the Apex Court in Civil Appeal No. 10956/2018 in the matter of Sabha Shanker Dube vs Divisional Forest Officer and Others and connected cases, it was a Writ Appeal arising from the orders passed by the Hon'ble High Court denying regularisation of services of the daily rated workers employed in group D posts of the Forest Department. The Division Bench of the Hon'ble High Court had dismissed the appeal. The Apex Court allowed the appeal to the extent that the Appellants are entitled to be paid the minimum of the pay scales applicable to the regular employees working on the same post. During the course of discussion at Para 11 it was clarified “.... we are not called upon to adjudicate on the rights of the Appellants relating to the regularisation of their services”. The next judgment of the Apex Court relied pertains to the employees in Tiwari vs The State of Jharkhand dated 01.08.2018, the Writ Petitioners were daily wagers / contract workers appointed to different posts sought regularisation on the basis of provisions of Jharkhand Sarkar Ewam Karyarat Karmiyo Ki Sewa Niyamithikaran Niyamawali (Regularisation Rules).

10. None of the above judgments have semblance to the case on hand. It is an individual dispute seeking regularisation on the basis of the earlier award passed by this Tribunal which is already discussed in the preceding para.

11. In view of the observation supra I hold that the referred issue is premature. 1st Party workman since is working without break along with statutory benefits like, the Provident Fund facility and bonus, is not entitled for any relief in this reference.

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 13th September, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 26 नवम्बर, 2019

का.आ. 2083.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटका ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 27/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2019 को प्राप्त हुआ था।

[सं. एल-12012/33/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 26th November, 2019

S.O. 2083.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore* as shown in the Annexure, in the industrial dispute between the management of Karnataka Gramina Bank and their workmen, received by the Central Government on 26.11.2019.

[No. L-12012/33/2013-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 13TH SEPTEMBER 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 27/2013

I Party

Sh. Siddamallappa,
Dhanya Complex,
Main Road,
N.R. Puram Post & Taluk ,
Chikmagalur District - 577 134.

II Party

The Chairman,
Karnataka Gramina Bank,
Head Office, CA No. 20,
Vijayanagar 2nd Stage,
Mysore - 570 017.

Appearance

Advocate for I Party : Mr. H. K. Nagabhushana

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No.L-12012/33/2013-IR(B-I) dated 07.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management in denying regularization to Sri Siddamallappa for the post of sweeper-cum-messenger is legal and justified? If not, to what he is entitled?”

1. The case of the 1st Party is, that his candidature was sponsored by the District Employment Exchange in the year 1992 for the post of Messenger cum Sweeper in the Uddeboranahalli Branch of erstwhile Chikamagalur Kodagu Gramina Bank / 2nd Party; he approached the 2nd Party Management and was issued letter of temporary appointment dated 11.07.1991 as Messenger cum Sweeper and he is working without any break. He sought for regularisation of his service during the year 2008; the 2nd Party issued an endorsement to the effect that his application will be considered as and when vacancy arises; between the year 2000-2006 on the Award passed by this Tribunal some of the employees were reinstated and their service is regularised. On the basis of the Award he approached the 2nd Party for regularisation of his service but same is not considered so far. They have violated Schedule V of the Industrial Dispute Act and adopted unfair labour practice. His wages are enhanced from Rs. 30/- per day to Rs. 280/- per day and is paid on monthly basis. Presently the Administration of the Bank is taken over Chikamangalur Kodagu Gramina Bank and called as Kaveri Grameena Bank.

2. The 2nd Party Kaveri Grameena Bank during the pendency of proceedings amalgamated with Pragathi Krishna Gramina Bank and now called Karnataka Gramina Bank vide extraordinary Gazette notification dated 22.02.2019 w.e.f 01.04.2019. The cause title of the claim petition is amended accordingly.

3. The 2nd Party / Kaveri Grameena Bank in its counter statement contended that 1st Party was selected as temporary part time Messenger cum Sweeper at Uddeboranahalli Branch of a Chikamagalur Kodagu Gramina Bank on 11.07.1991 after an interview on 16.03.1991, his engagement was against the leave vacancy as and when it arose and it was purely on contractual basis for a fixed period. His employment not being of permanent nature, the action in not considering his request for permanent employment is legal and justified. At no point of time it is agreed to absorb him for a permanent post.

4. It is further stated that the erstwhile 2nd Party Kaveri Grameena Bank is a Regional Rural Bank established under Regional Rural Bank 1976; the erstwhile Chikmagalur Kodagu Garmina Bank, Vishvesharaiah Grameena Bank and Cauvery Kalpatharu Grameena Bank amalgamated in terms of Government of India notification dated 01.11.2012 and a new entity was formed. There is no policy of recruiting the Messenger cum Sweeper in the Bank. As and when required, the services of a casual labour is engaged on the temporary basis for the purpose. There is no post of Messenger cum Sweeper in the Bank. 1st Party was irregular in performing his duties as a part time temporary Messenger cum Sweeper; he has not completed 240 days of continuous service within the meaning of section 25(B) of the Industrial Dispute Act. On the representation submitted by him during 2008 he was informed that his request could not be considered and whenever any such vacancy arise subject to fulfilment of all eligibility norms by the 1st Party his confirmation would be considered. The recruitment for the post sought by the 1st Party has not taken place in the Bank and his request could not be considered. If the Bank assumes such a vacancy 1st Party will not be automatically eligible for recruitment on permanent basis. In view of the Ban by Government of India they could not initiate the process of recruitment in any cadre / category expect on compassionate ground during the period.

5. Both parties have adduced their evidence reiterating their stand. Written arguments are submitted by both.

6. On behalf of the 2nd Party Chief Manager (P) Officiating Kaveri Grameena Bank was the witness; during his cross examination he admits in the year 2006 some Messenger who were ordered to be regularised by the Hon’ble Supreme Court were regularised in service; contribution from the wages of the 1st Party workman towards Provident Fund is deducted and is paid benefit bonus also.

During his rebuttal evidence 1st Party reiterated his claim statement averments by way of two affidavit evidence. Among other things he has produced his Appointment Orders on temporary basis, Wage Certificates and Salary Slips.

7. It is not the case of termination. Vide memo dated 03.07.2019 1st Party brought it on record that his service is continued without break and salary is paid by the present Management through Wage Bill Receipt. The point referred for adjudication presupposes that the 2nd Party has denied to regularise him for the post of Sweeper cum Messenger. But

there is no evidence to the effect that at any time they have considered and denied for regularisation of the services of temporary workmen.

It is not in dispute that the 2nd Party which is formed under Regional Rural Bank Act of 1976; because of the ban imposed on recruitment by the Government of India, so far could not recruit any cadre / category except on compassionate ground. When there is no such vacancy of permanent Messenger cum Sweeper and no applications were called for by the 2nd Party to any permanent post, and the 1st Party is provided work with all statutory benefits, the reference was premature. A Photostat copy of the Common Award passed by this Tribunal in CR 13/2004 and 14/2004 dated 09.01.2006 is relied. The 1st Party is looking for Award for regularising his service as Awarded in that case. In the said case the point referred for adjudication was “*Whether the action of the management of chikamagalur Kodagu Gramina Bank in not regularising the services of Sh.... Temporary Messenger cum Sweeper is legal and justified? If not to what relief the workman is entitled?*”

In the said case the Bank had contended that Government of India NABARD had imposed ban on recruitment of any employee on permanent basis but the 1st Party had counteracted that said ban is lifted by way of circular in the year 2004. The Award was passed on following terms “*the management is directed to regularise the services of the first Party workmen on permanent basis to the post of Messenger cum Sweeper, if ban imposed by Government of India (NABARD) under the letter bearing reference No. NB: IDD: RRCBD: 1736: C-316 (Gen): 98-99 dated 19.09.1988 has already been lifted. In case the ban continues, their case for permanent post shall be considered on priority basis....*”

8. The question of the ban imposed by the NABARD which was subsequently withdrawn was not the issue in the present case. While directing the 2nd Party to regularise the service of the 1st Party, this Tribunal also awarded the alternative relief in the event ban is not lifted, thus directing the 2nd Party to treat the case of the 1st Party for permanent post on priority basis. Assuming for a while that the ban is lifted and the vacancies for permanent post are open. The 2nd Party being a Public Institution created under Regional Rural Bank Act, appointments cannot be done at the level of individual Act. The eligibility necessarily will be announced while calling for applications to the post. In the event of any violation by the 2nd Party of their own eligibility criteria necessarily that shall entitle for the workman to seek redressal under the provisions of Industrial Dispute Act.

9. The 1st Party as placed reliance on the judgments passed by the Apex Court and the Hon'ble High Court, the judgment of the Apex Court in Food Corporation of India vs General Secretary, FCI India Employees Union and others, Civil Appeal No. 10499/2011, and Food Corporation of India vs The workmen through the Convener and another, the subject matter involved in this case pertains to regularisation of service of 955 employees employed by the contract labourers Society to work in FCI to carry out their Business. The Industrial Tribunal had passed Award by answering the reference in favour of the workers union and against the Corporation, it was held that 955 employees are entitled for regularisation of service. The said Award was upheld up to the Apex Court. The second case pertains to the regularisation of service of 2007 contract employees working on short term contracts over 10-20 years, the Award passed by the Industrial Tribunal of Mumbai was confirmed by the Apex Court. Judgment of the Hon'ble Calcutta High Court reported in 2017 LLR 716 in the matter of SAIL vs workmen, SAIL and Others, is also about contract employment wherein it was asserted while sustaining the Award of the Industrial Tribunal that ‘if the contract is declared to be sham, the employees of contractors would be treated as employees of the principle employer’. Next judgment relied is from that of the Apex Court in Civil Appeal No. 10956/2018 in the matter of Sabha Shanker Dube vs Divisional Forest Officer and Others and connected cases, it was a Writ Appeal arising from the orders passed by the Hon'ble High Court denying regularisation of services of the daily rated workers employed in group D posts of the Forest Department. The Division Bench of the Hon'ble High Court had dismissed the appeal. The Apex Court allowed the appeal to the extent that the Appellants are entitled to be paid the minimum of the pay scales applicable to the regular employees working on the same post. During the course of discussion at Para 11 it was clarified “.... we are not called upon to adjudicate on the rights of the Appellants relating to the regularisation of their services”. The next judgment of the Apex Court relied pertains to the employees in Tiwari vs The State of Jharkhand dated 01.08.2018, the Writ Petitioners were daily wagers / contract workers appointed to different posts sought regularisation on the basis of provisions of Jharkhand Sarkar Ewam Karyarat Karmiyo Ki Sewa Niyamithikaran Niyamawali (Regularisation Rules).

10. None of the above judgments have semblance to the case on hand. It is an individual dispute seeking regularisation on the basis of the earlier award passed by this Tribunal which is already discussed in the preceding para.

11. In view of the observation supra I hold that the referred issue is premature. 1st Party workman since is working without break along with statutory benefits like, Provident Fund facility and bonus, is not entitled for any relief in this reference.

AWARD**The reference is rejected**

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 13th September, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 26 नवम्बर, 2019

का.आ. 2084.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 02/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2019 को प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 26th November, 2019

S.O. 2084.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 26.11.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

DATED : 26TH SEPTEMBER 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

ID 02/2013**I Party**

Sh. Ramappa,
S/o Dasappa,
Residing at “Hrushikesh Nilaya”,
Maruthinagar, Behind KEB Quarters,
Madhugiri – 575 132.

II Party

1. The Chairman and Managing Director,
State Bank of India,
Head Office,
K G Road,
Bangalore - 560 009.
2. The Assistant General Manager and
Disciplinary Authority,
State Bank of India,
Region –V, Tumkur Bangalore Zone,
No. 5, Bank Road,
Tumkur – 572 101.

Appearance

Advocate for I Party : Mr. V. S. Naik

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

1. The claim petition is filed under sec 2-A (3) (2) of the Industrial Dispute Act (for brevity ‘the Act’) against the punishment of removal from service with superannuation benefits vide order dated 24.01.2008.
2. The claim is contested on various grounds. The first ground of attack is, the delay in raising the dispute 5 years after the date of punishment and the claim is hit by sub sec 3 of sec 2-A of ‘the Act’.
3. Argument is heard from both learned advocates on the question of limitation contemplated under sec 2-A (3) of ‘the Act’.
4. Admittedly the punishment order is dated 24.01.2008 and the petition under sec 2-A (3) (2) of the Industrial Dispute Act is filed on 11.01.2013. Sub sec 3 of sec 2-A reads thus:

“(3)The application referred to in sub sec (2) shall be made to the Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub sec (1).”

5. Obviously the petition is presented beyond the limitation period of 3 years from the date of the punishment order challenged.

6. Sh. VSN for the 1st Party submits that without any delay the 1st Party had petitioned to the Conciliation Officer against his removal. While the conciliation proceeding was pending, after 45 days he filed the present individual dispute.

7. Whatever be the reason for the delay maybe, as the facts stand the present petition is filed after the limitation period contemplated under sub sec 3 of sec 2-A of ‘the Act’, hence not maintainable. If the 1st Party workman had invoked the jurisdiction of the appropriate Government under sec 10(1) by raising an Industrial Dispute that would be within the propriety of the Government to look into the question of delay in raising the Industrial Dispute. If he was disgruntled against the way the conciliation proceedings were steered his avenue was, sub sec 2 of 2-A of ‘the Act’ by making an application to the concerned Labour Court / Tribunal after expiry of 45 days from the date of his application to the Conciliation Officer. In that event this Tribunal would have assumed jurisdiction to adjudicate the dispute as if it was a dispute referred to by the appropriate Government. But in the case on hand the 1st Party without making such an application has abandoned the Conciliation proceedings and has filed the petition without whispering anything about the conciliation proceedings. In his petition he has averred to the effect that delay was due to bona fide reason that he was totally unfit to report to duty in view of his ill health. Though he has sought for condonation of delay there is no such provision under the scheme of Industrial Dispute Act to transgress the limitation period contemplated under ‘the Act’. Hence, the only conclusion is the petition filed beyond 3 years of the punishment order is not maintainable.

AWARD

The petition filed under sec 2-A (3)(2) of the Industrial Dispute Act is rejected as not maintainable. However, liberty is reserved to the petitioner to request the concerned Conciliation Authorities to resume the conciliation proceedings.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 26th September 2019).

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 26 नवम्बर, 2019

का.आ. 2085.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रगती ग्रामीण बैंक प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 22/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2019 प्राप्त हुआ था।

[सं. एल-12012/36/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 26th November, 2019

S.O. 2085.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore* as shown in the Annexure, in the industrial dispute between the management of Pragathi Gramin Bank and their workmen, received by the Central Government on 26.11.2019.

[No. L-12012/36/2012-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 15Th NOVEMBER 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 22/2012

I Party

Sh. Koteppa,
S/o Sh. Mallappa,
Ex-PTM Kogali,
H.B. Hill Taluk,
Dist: Bellary

II Party

The Chairman,
Pragathi Gramin Bank,
Head Office,
Post Box No. 55, Gandhinagar
Bellary – 583103.

Appearance

Advocate for I Party : Mr. R. Nagendra Naik

Advocate for II Party : Mr. B.C. Prabhakar

AWARD

The Central Government vide Order No. L-12012/36/2012-IR(B-I) dated 20.07.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Pragathi Gramin Bank in terminating the services of Shri. Koteppa S/o Shri. Mallappa, is legal and justified? To what relief the workman is entitled?”

1. Though served and represented by a counsel, 1st Party did not turn up to pursue his claim. 2nd Party has filed a statement justifying their action, their case is,

the 1st Party was appointed provisionally as Messenger vide order dated 24.10.1987 and was put on probation; 1st Party while working at Kogali Branch, committed the misconduct of debit entry without a debit slip in the ledger folio of SB A/c No. 2456 for Rs. 4,400/- and also made a credit entry of Rs. 4,400 in the SB A/c No. 2319 without any credit slip etc. Before the Investigating Officer vide statement dated 19.12.2006 he confessed that, he had transferred an amount of Rs. 4,400/- from SB 2456 to SB 2319 without preparing debit and credit slips and without making any entry in the subsidiary. Again on 21.01.2006 he has stated that, he obtained the signature of N. Dyamanagouda (Account holder of SB 2319) on withdrawal slip filled up the same for Rs. 4,400/- debited his SB A/c, and placed for passing the withdrawal; he has further stated that he has done as above to meet his personal financial commitments.

For the above misconduct charge sheet was issued; he submitted his explanation admitting the charges; to give one more opportunity to him; 2nd Party initiated Domestic Enquiry by appointing Enquiry Officer and Presenting Officer; before the Enquiry Officer he admitted the charges unconditionally, however the management examined seven witness in support of the charges; 1st Party did not cross examine the management witness, he did not adduce defence evidence; the Enquiry Officer after giving all reasonable opportunities submitted his report holding the 1st Party guilty of the charges. The Enquiry Report was marked to him but he failed to submit his representation; the Disciplinary Authority satisfied with the opportunities given to the workman and also with the reasonableness of the enquiry finding and after giving

personal hearing to him passed the punishment of *removal from service which shall not be a disqualification for future employment*, as per the Pragathi Grameena Bank (Officer and Employees) Service Regulation 2005.

The appeal preferred by him was rejected; the misconduct proved against him is grave and severe. The 2nd Party has lost confidence in him and the action is legal, proper and justified.

2. In support of their contention 2nd Party filed the affidavit of the Enquiry Officer and placed the enquiry records, enquiry findings and the proceedings of the Disciplinary Authority and the Appellate Authority as Ex M-1 to Ex M-16.

3. In the absence of anything contrary to the case of the 2nd Party, there is nothing to suggest that the action taken against the workman is not legal and justified.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 15th November, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 26 नवम्बर, 2019

का.आ. 2086.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन सी रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 9/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.11.2019 प्राप्त हुआ था।

[सं. एल-41011/28/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 26th November, 2019

S.O. 2086.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur* as shown in the Annexure, in the industrial dispute between the management of N.C. Railway and their workmen, received by the Central Government on 26.11.2019.

[No. L-41011/28/2017-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Present : Sri Rakesh Kumar, HJS.

Industrial Dispute No. 9 of 2018

Between :

Sri S N Srivastava,
General Secretary Rail Sewak Sangh,
J-422, Indralok Colony,
Kanpur Road,
Lucknow.

And

Deputy Chief Engineer (Bridge)/Line,
N.C. Railway,
Allahabad.

AWARD

1. Central Government, MOL, vide notification No. L-41011/28/2017 (IR(B-I) dated 19.01.2018 has referred the following Industrial Dispute to this Tribunal for adjudication.

“Whether the action of the management of Railway Management, Deputy Chief Engineer / Bridge, Line, NCR Allahabad in withholding payment of Dues/Arrears in respect of Sri Shiv Kumar & Sri Kanhaiya Singh Helper-1 is justified and legal? If not to what relief the concerned workmen are entitled for?”

2. After receipt of reference order from the Ministry, registered notices dated 19.02.2018 and 12.03.2019 were issued from the Tribunal directing Sri S N Srivastava, General Secretary Rail Sewak Sangh, J-422, Indralok Colony, Kanpur Road, Lucknow, to file claim petition supported with relevant documentary evidence by fixing dates for hearing of the case i.e. 06.04.2018, 31.05.2018, 02.08.2018, 05.10.2018, 13.12.2018, 27.02.2019, 25.03.2019, 06.05.2019 and from the order sheet of the case it is also evident that lastly case was taken up for hearing on 17.06.2019, but it is surprising to note that on none of the dates fixed in the case neither any representative of the Sangh raising the present dispute on behalf of the workmen appeared in the case nor any claim petition was filed in the case. Even no adjournment was sought by the representative of the Sangh. On behalf of opposite party N.C. Railway, authority was filed by Sri Rameshwar Dayal on 31.05.2018 and he has appeared again on 27.02.2019.

3. By a bare perusal of the records, it is evident that the representative of the Sangh raising the present dispute on behalf of the workmen, despite availing the sufficient and reasonable opportunities has palpably failed in discharging its obligation in filing the claim petition in support of its case, therefore, it is abundantly clear that neither the Sangh nor the workmen are interested in prosecuting the present case.

4. Therefore, under the facts and circumstances, the case is adjudicated against the Sangh / Workmen holding that the Sangh is not entitled for any relief for want of pleadings and proof.

5. Award in the above case is as above.

RAKESH KUMAR, Presiding Officer

15.07.2019

नई दिल्ली, 27 नवम्बर, 2019

का.आ. 2087.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय यूको बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में ओद्योगिक अधिकरण, पटना (बिहार) के पंचाट (संदर्भ सं. 12 (सी) / 2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.11.2019 को प्राप्त हुआ था।

[सं. एल-39025 / 01 / 2019-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 27th November, 2019

S.O. 2087.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12(C)/2015) of the *Industrial Tribunal, PATNA (BIHAR)* as shown in the Annexure, in the industrial dispute between the management of UCO Bank, and their workmen, received by the Central Government on 27.11.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No. 12 (C) of 2015

**Between The General Manager, (H.R.M) UCO Bank, Head Office, 10, Brabourne Road, Kolkata-700001
(2) The Zonal Manager, UCO Bank, Zonal Office, Maurya Lok Complex, Block 'A', 4th Floor, Dak**

Bunglow Road, Patna-800001 and their workmen Sri Anup Kumar, S/O- Sri Krishna Yadav, Vill. + P.O- Maksudpur, P.S- Khijarsarai, Dist.- Gaya, Pin- 823003 and two others.

For the management : Sri Praveen Kumar, Advocate.

For the workman : Sri B. Prasad, State Secretary, Uco Bank Employees Association (Bihar State Committee)

Present : Vishweshwar Nath Mishra, Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dt- 31st May, 2018

1. The present case has been filed u/s- 2A (1 & 2) of the Industrial Dispute (Amendment) Act, 2010 by the aforesaid workman who seeks relief of over wrongful termination from the services of the Bank during pendency of conciliation proceedings and denial of regularisation in the services of Uco Bank as Peon.

2. Matter was raised by the workman before the Assistant Labour Commissioner (Central), Patna (for short A.L.C (C), who issued notice dt- 29th July, .2015.

3. Both parties appeared before this tribunal and filed their statement of claim & additional statement of claim and written statement.

4. The workman has stated that the management terminated the services of the workmen w.e.f. 22.07.2015 in violation of the provisions of section 33 of the Industrial Dispute Act and information of termination of services of the workman was given to the conciliation officer. As a period of more than 45 days elapsed with no sign of any settlement, the workman preferred to an application before this tribunal as per the provision of section 2A (1 & 2) of the Industrial Disputes (Amendment) Act, 2010.

5. M.W-1 (Lipsa Sahu) and M.W-2 (Smt Babita Kumari), on behalf of the management were examined, cross-examined and discharged.

6. In the instant case a petition has been filed on behalf of the management on 05.02.2018 stating therein that in view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2013 the present I.D. Case is not maintainable and hence the same should be rejected.

On the other hand a petition has been filed on behalf of the workman on 18.04.2018 praying therein to withdraw the instant I.D.Case.

Heard both the parties. As the petitioner/workman himself wants to withdraw I.D. Case, hence his prayer is hereby allowed and the I.D. Case is accordingly disposed off as withdrawn.

Hence in this I. D. Case at present “No Dispute Award” is being passed technically but not on merit in view of the consent of both the parties as well as in view the recent judgement of the Hon'ble High Patna Court as aforesaid. This award is effected after gazette notification / publication of award.

Accordingly, this is my award.

Dictated & Corrected by me.

31.05.2018

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 27 नवम्बर, 2019

का.आ. 2088.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मजगांव डोक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 1/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.11.2019 को प्राप्त हुआ था।

[सं. एल-39025/01/2019-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 27th November, 2019

S.O. 2088.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Mazgaon Dock Ltd., and their workmen, received by the Central Government on 27.11.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

Appln.(Ref) No. CGIT-2/1 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MAZGAON DOCK LTD.

The Chairman & Managing Director,
Mazgaon Dock Ltd.,
Mazgaon,
Mumbai – 400 010.

AND

THEIR WORKMEN

Shri Prakash Shankar Satam,
Room No. 4, Nissar Ahamed Chawl,
D'Mello Compound,
Vakola Bridge Road, Santacruz [East]
Mumbai – 400 055.

APPEARANCES:

FOR THE EMPLOYER : Mr. P. M. Palshikar, Advocate

FOR THE WORKMEN : Mr. R. D. Bhat, Advocate

Mumbai, dated the 23rd October, 2019

AWARD

1. This is a reference filed under Section 2-A sub section (2) of the Industrial Disputes Act, 1947 in view of the amendment in the Act No. 24 of 2010.

2. The second party workman has filed statement of claim Ex.2 According to him, he joined services of Mazgaon Dock Ltd. on temporary basis on 12.12.80. He was confirmed in service on 13.7.83. His last drawn salary was Rs.16000/- p.m. His work was satisfactory. Hence he was promoted as Tool Room Assistant, Semi-skilled Grade – II, later T.R.A. Grade – II.

3. It is then case of the concerned workman that his mother have been keeping ill-health resulting in his inability to report for working on regular basis. His mother expired in 2009 after long illness. He suffered merely on account of depression for which he had to take prolonged treatment. Therefore he could not report for work between 15.4.09 to 1.6.09. During this period upto 10.5.09 he was advised rest and for undergoing treatment for his ill-heath. He was declared fit to resume duties on 10.5.09. However, he could not do so as he felt depressed. He reported for work on 1.6.09 along with medical certificate but he was not permitted to report for work immediately. However, he was allowed to resume the duty on 2.6.09. He worked for about 10 – 15 days but his mother was seriously ill and she had to be taken to native place where she was admitted in the hospital of Dr. Mhaskar in ICU. During the same period he also took

treatment for depression from Dist. hospital Kankavli, Dist. Sindhudurg. He was advised bed rest for about 8 months for neurosis.

4. According to him during this period the charge sheet dt. 16.6.09 was issued to him. Since he and his family were at their native place, he was not aware of the said charge sheet. He was undergoing treatment for anxiety neurosis. Therefore he was not in a position to act as a normal person. He could not participate in the enquiry nor he was in a position to inform the authorities accordingly. He is not able to find any intimation of enquiry proceedings sent to him. Enquiry proceedings were also not sent to him but ultimately he was held guilty of remaining absent without leave or unauthorized absent by the Enquiry Officer. On the basis of such findings he has been dismissed by order dt. 18.3.10. He thereafter approached Divisional Manager by separate letters dt. 9.10.09 & 26.10.09 but the said letters were rejected. Even after his dismissal he continued to undergo treatment for anxiety neurosis and was therefore not in a position to immediately approach this tribunal. He, however, approached the authorities for taking compassionate view but has failed in his attempt. So according to the concerned workman it cannot be said that he was absent without leave or was unauthorisedly absent and as such the action taken by the first party employer against him is contrary to law and deserves to be quashed & set aside. He is therefore asking for setting aside the dismissal order dt. 18.3.10 and for reinstatement with full back wages and continuity of service with all benefits.

5. The first party employer by filing written statement Ex. 6 resisted the claim contending therein that the concerned workman was issued the charge sheet on 16.6.09 for indulging in the acts of misconduct falling under Standing orders 22 (6), 22 (12). Thereafter the domestic enquiry against him was conducted. Initially the date of enquiry was fixed for hearing on 25.6.09 since the workman failed to appear in the enquiry, the same was postponed to 16.7.09 and subsequently the enquiry was held on 11.8.09, 9.9.09 and 6.10.09. However, again the workman failed to appear on all the above dates of enquiry despite acknowledging receipt of letters postponing the enquiry. The enquiry was therefore conducted and concluded ex-parte on 21.10.09. E.O. held the workman guilty of all the charges leveled against him. The copy of finding report of the E.O. dt. 9.11.09 and copies of enquiry proceedings were forwarded to the workman vide letter dt. 9.11.09. Despite acknowledging receipt of the said letter the workman failed to make any representation to disciplinary authority. Disciplinary authority after considering the report & findings of E.O. held him guilty of the charges under Standing orders 22 (6), 22 (12) and dismissed the second party workman from company's services w.e.f. 19.3.10 vide dismissal order dt. 18.3.10.

6. The dismissal order was sent to the concerned workman by R.P.A.D. on his local as well as native place addresses as notified in his service document. The workman has acknowledged the receipt of said dismissal order. As and by way of abandoned cautioned one month notice pay of Rs.15,276/- was also sent to him by Money order on his native place address as notified in his service document. The said amount was returned to the company as workman has refused to accept the said amount.

7. It is then the case of the first party that the concerned workman raised the demand for his reinstatement with full back wages and continuity of service after a gap of about 3 years from the date of his dismissal before Conciliation Officer and ALC. Conciliation ended in failure. Accordingly the Conciliation Officer issued certificate dt. 30.9.13 recording the failure of conciliation.

8. It is thus the case of the first party that after the services of the concerned workman were confirmed he remained absent without intimation for 44 days between 4/84 to 3/85. He also remained absent unauthorisedly for 26 days between 4/87 to 3/88. His probation period was extended twice by six months due to his poor / irregular attendance and unsatisfactory performance. Even during the enquiry proceedings fair opportunities were given to him to defend his case and the enquiry was postponed on 5 occasions. The concerned workman purposely avoided to collect the letters of enquiry postponements. As such he remained absent from duty without giving intimation to the company. He failed to submit medical certificate issued by Dr. Subhash D. Sonawala within the stipulated time limit. Even in the past the concerned workman was issued with charge sheet for remaining absent unauthorisedly. On every occasion he was awarded with minor punishment of warning and two times 4 days suspension. Despite giving him ample opportunity he failed to do so. In the past he was issued with 9 charge sheets for conducting similar misconducts for remaining absent from duty without intimation. Therefore he is not entitled to any reliefs. First party has thus sought the dismissal of reference.

9. Following issues are framed at Ex.9. I reproduce the Issues along with my findings thereon for the reasons to follow:

Sr. No.	Issue	Findings
1	Whether the Reference is bad for delay and latches ?	No
2.	Whether the enquiry conducted against the second party is fair and proper ?	Yes

3.	Whether the findings of Inquiry Officer are perverse ?	No
4.	Whether the punishment of dismissal from service is shockingly disproportionate to the proved misconduct ?	No
5.	Whether the workman is entitled to be reinstated with full back-wages as prayed for ?	No
6.	What relief the workman is entitled to ?	No
7.	What order ?	As per final order

Reasons

Issue No.1 to 3.

10. In this respect, the concerned workman in his evidence has admitted that he has received the charge sheet in respect of charge of absenteeism. Admittedly the enquiry was conducted and during enquiry the concerned workman remained absent.

11. On going through the enquiry proceedings, it appears that the charge sheet was issued to the concerned workman on 16.1.09 informing him that the enquiry would be held before the E.O. Shri U.W. Jadhav on 25.1.09 at 10.30 a.m. This charge sheet is admittedly received by the concerned workman. However, on 25.6.09 the concerned workman did not remain present and the enquiry proceedings were adjourned to 16.7.09 at 3.00 p.m. Again on 16.7.09 the concerned workman was absent and the enquiry was postponed to 11.8.09 at 3.00 p.m. Again on 11.8.09 he remained absent and the enquiry was postponed to 9.9.09 at 3.00 p.m. On 9.9.09 he remained absent and enquiry was postponed to 6.10.09 at 2.00 p.m. Again on 6.10.09 he remained absent and therefore the enquiry was conducted ex-parte.

12. It clearly appears from the enquiry report that intimation memo was sent to the concerned workman on these dates at both the addresses of the concerned workman i.e. of Mumbai and native place at Sindhudurg. The intimation memos were sent by RPAD and envelopes were returned undelivered by the postal authority with the remarks ‘unclaimed’. Intimation memos were sent at his local address at Santacruz and the letter was sent to his native place address. But the envelopes were returned with the remarks ‘person not staying at his native place hence returned to sender’. It appears therefore that the efforts were made by the E.O. to secure the presence of concerned workman before him during the course of enquiry. But he remained absent and therefore the enquiry was fixed for hearing on 21.10.09 at 2.00 p.m., in respect of which intimation memo dt. 8.10.09 was sent to the concerned workman at his both addresses but the envelopes were not received back to the company. It cannot be said therefore that the enquiry was conducted against the concerned workman without informing him about the dates of the enquiry or that he was not given opportunity to defend himself during the course of enquiry when the concerned workman himself opted not to remain present during the course of enquiry then there was no other option for the E.O. to conduct the enquiry ex-parte.

13. So far charges leveled against the concerned workman are in respect of absence on duty without permission for the period exceeding 10 consecutive days and commission of act subversive of the discipline of the estt. Ultimately the E.O. on the basis of documents produced by the management has concluded that the concerned workman remained absent without intimation for the period from 15.4.09 to 1.6.09 and it be treated as his unauthorized absence which amounted to misconduct under company’s SO – 22 (6), absence without permission for the period exceeding 10 consecutive days.

14. In the circumstances it is the case of concerned workman that he submitted medical certificates for his absence from 15.4.09 to 9.5.09 and thereafter he was allowed to report for duties on 2.6.09 subject to disciplinary action. It appears that he produced the medical certificates on 1.6.09. It appears therefore that he submitted medical certificates at belated stage and not within stipulated time and therefore it was decided to conduct the disciplinary enquiry and subject to that disciplinary action he was allowed to resume duty w.e.f. 2.6.09. It is in that circumstances it was expected of the concerned workman to prove the medical certificates by examining the medical officer. During the course of enquiry he remained absent and he has not proved the medical certificates by examining the medical practitioner. Even before this tribunal though he has examined himself and stated to the effect that he produced medical certificates before the management but then he has not examined medical practitioner who issued medical certificates to prove that his absence on duty was beyond his control and that it was not deliberate.

15. The question then creeps in as to whether the findings recorded by the E.O. that the charge of absenteeism was proved against the concerned workman is based on evidence or not? From the evidence of concerned workman itself, it is clear that he was unable to attend the work for the period mentioned in the charge sheet and the reasons stated by him are that of his illness for which he has relied on medical certificates. Xerox copies of the medical certificates are produced on record to show that he was suffering from depression for which he was advised bed rest. These copies of medical

certificates without adducing the evidence of medical officer who issued these medical certificates cannot be read in evidence and even before the E.O. he has not adduced any such evidence of the medical officer Dr. Mhaskar or medical officer from Govt. Hospital, Kankavli. In such circumstances it is not possible to accept the evidence of the concerned workman that he was not in a position to realize that it was necessary for him to attend the enquiry and defend himself. Infact, it appears that intimation memos were repeatedly issued to him by the EO and even thereafter he opted to remain absent during the course of enquiry. His conduct itself eloquent to show that his absence from duty was deliberate. It is in that circumstances the findings of the EO are legal and proper.

16. Learned counsel for the concerned workman submitted that the workman was ill and submitted the medical certificates in respect of period from 15.4.09 to 9.5.09 and infact the Enquiry Officer has not analysed the evidence brought to record. Submission is to the effect that the absence from duty was not willful and deliberate. Even there are no allegations that his unauthorized absence was willful and deliberate and therefore the findings of the EO are not legal. In the context he seeks to rely on the decision in case of Chhelsingh V/s. MGB Grahmin Bank, Pali – 2014 (0) – AIJEL – SC – 5526. In that case it was finding of the fact that the medical certificates which were submitted by the appellant were forged or fabricated or obtained on consideration and therefore in the absence of such findings and evidence it was not open to the EO to disbelieve the medical certificates issued by doctors without any valid reason or on the ground of 24 days delay.

17. In the instant case as seen earlier the medical certificates are not proved by adducing the evidence of medical officer who issued the medical certificates and even during the enquiry the concerned workman remained absent. In the instant case repeatedly intimation memos were issued to him but he remained absent during the course of enquiry and therefore his absence was deliberate. There was no good reason for his absence and in his evidence also the concerned workman has not placed before court the circumstances which were beyond his control.

18. Learned counsel for the concerned workman seeks to rely on the decision in case of Krishnakant B. Parmar V/s. Union of India – 2012 (0) – AIJEL – SC – 50948 to submit that there were circumstances beyond the control of concerned workman like his illness and therefore he cannot be held guilty of failure of devotion to duty or behavior unbecoming of government servant.

19. It is no doubt true that if there are compelling circumstances beyond the control of an employee like illness, hospitalization, accident etc. then he cannot be held guilty of failure of devotion to duty. However, in the instant case there is evidence to show that the concerned workman was punished in the past during the course of his service tenure for the same misconduct. Management has produced the document Ex.15 in respect of service record of the concerned workman which can be tabulated below:

1.	Warned for HAWP vide PD/W/162 dt. 26.8.85
2.	Severely warned for HAWP DPD/IC/SCN/W/16 dt. 28.2.89
3.	Suspended for 1 day for HAWP DPD/IC/CS/189 dt. 26.5.90
4.	Suspended for 2 days for HAWP DPD/IC/CS/83/93 dt. 26.4.93
5.	Suspended for 4 days for HAWP DPD/IC/CS/39/95 dt. 28.1.95
6.	Suspended for 4 days for HAWP SB-P&IR/LC/CS/189-06 dt. 10.8.07
7.	Charge sheeted for 76 days absent for the year 2007
8.	Charge sheeted for 9.6.08 to 19.10.08 for the year 2008
9.	Charge sheeted for HAWP From 12.11.2008 to 24.02.2009
10.	Charge sheeted for HAWP from 15.4.2009 to 01.06.2009.

20. This would show that the concerned workman was punished for habitual absence and was charge-sheeted earlier for absence on duty for 76 days and then warned severally for his misconduct.

21. Realising this difficulty, the Learned counsel for the concerned workman submitted that past record of the concerned workman is not relevant because, he was also promoted from time to time during the course of his service tenure and there is no other allegations with regard to work and conduct of the workman with regard to work place. This submission is not acceptable since the punishment of dismissal has been imposed considering the charge of absenteeism coupled with the past record of the concerned workman. As regards the relevancy of the past record the Learned counsel for the management seeks to rely on the decision in case of Mr. Balasaheb Madhukar Bhende V/s. G.M. BEST Undertakings, Best Bhavan, Bombay – WP No. 6804 / 2005.

22. There is one more aspect which needs consideration. As a matter of fact the concerned workman has raised the dispute after 3 years of the order of dismissal. It is therefore contention of the management in the written statement that demand of reinstatement is barred by limitation. In the context it can be said that there is no limitation prescribed for raising dispute for reinstatement but then the fact remains that raising of demand of reinstatement after 3 years of order of dismissal speaks about delayed action of the concerned workman.

23. Considering all these facts, I find that the enquiry conducted against the concerned workman is fair & proper and findings of the E.O. are not perverse. The above issues are therefore answered accordingly as indicated against each of them in terms of above observations.

Issue No. 4.

24. Learned counsel for the concerned workman submitted that the punishment of dismissal from service simply for absenteeism for 15 days is undue harsh and is grossly disproportionate. As seen earlier the concerned workman remained absent intermediately during the tenure of his service and in the past he remained absence without intimation. Not only that he was punished, suspended, warned on several occasions. The EO has considered and concluded that the medical certificates which are produced by the concerned workman are not submitted in time. As seen earlier these medical certificates are also not proved by the concerned workman by examining the medical practitioner who issued the medical certificates. The charge has been held to be proved by EO and it has been brought on record that the charge of absenteeism is proved coupled with the past record of the concerned workman. Having regard to the habitual absenteeism being proved and also having regard to the past record of the concerned workman, it can be said that the punishment imposed is not disproportionate.

25. As a matter of fact, it appears that the concerned workman has preferred mercy petition in May '11 which was also rejected. In view of this it cannot be said that the punishment of dismissal from service is shockingly disproportionate. Issue No.4 is therefore answered accordingly.

Issue No. 5 to 7.

26. In view of my findings to the above issues, workman is not entitled to reinstatement in services with full back wages. He is not entitled to any relief. Reference is liable to be rejected with no order as to costs.

27. In the result, I pass the following order.

ORDER

Reference is rejected with no order as to costs.

Date: 23.10.2019

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2089.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय बैंक आफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम च्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 27/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.11. 2019 को प्राप्त हुआ था।

[सं. एल-12012/59/2014-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2089.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh* as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra, and their workmen, received by the Central Government on 28.11.2019.

[No. L-12012/59/2014-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 27/2014

Registered on:-10.10.2014

Sukh Dev S/o Mewa Singh, Resident of House No. 336/B, Village Darya, Chandigarh

...Workman

Versus

1. M/s. Bank of Maharashtra, SCO 88-89, Sector 17-C, Chandigarh.
2. Sh. Harish Gupta, A.G.M., M/s Bank of Maharashtra,
SCO No.88-89, Sector 17-C, Chandigarh.

...Management

AWARD

Passed on:-04.11.2019

Central Government vide Notification No. L-12012/59/2014-IR(B-II) Dated 25.09.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of Zonal Manager, Bank of Maharashtra, Chandigarh, in terminating the services of Sh. Sukhdev Singh w.e.f. 06.01.2014 is valid, just and legal? What relief the concerned workman is entitled to and from which date?”

1. Both the parties were served with notices. The workman Sukhdev Singh appeared and filed his statement of claim, alleging therein that he was appointed on 27.10.2008 as Driver by the respondent-bank to drive the vehicle of the bank and remained in the employment under supervision and control of the bank-authorities i.e. Sh. Gautam Banerjee, V.K. Bahulekar, Atul Bhatia, J.K. Hocechadani and lastly Harish Gupta, AGM of the respondent-bank. It is further stated that under the instruction of the respondent-bank Mr. Harish Gupta AGM refused the petitioner/workman to join duty on 06.01.2014 which tantamount to termination of services without any reason, show cause notice, enquiry or compensation to the workman. After the wrongful termination of the services of the workman, the respondent-bank retained the juniors in the service and recruited the fresh hand in place of petitioner/workman against the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947. The service rendered by the workman is of perennial in the nature and still continuing and has not been abolished so far. The attendance of the petitioner/workman was marked in the roll of the respondent-bank and he was paid wages by the respondent-bank. The application of the workman for regular appointment under the bank was processed and forwarded to the Deputy General Manager, HRM, Central Office Pune by the Regional Manager, Chandigarh. The workman was maintaining/filling the logbook of the vehicle of respondent-bank entrusted to him for driving of the bank-officers. The copy of logbook for the month of February 2011 of vehicle no.CH01-AA-6193 is annexed as Annexure A. The petitioner/workman has worked for more than 240 days of services with the respondent-bank during the 12 calendar year preceding the date of his termination hence he is entitled for reinstatement in service with continuity of service with full back wages for the intervene period.

2. Management-bank has filed its written statement, alleging therein that the demand notice sent by the petitioner/workman was received on 18.02.2014 which was duly replied on 25.02.2014 in personal capacity and on 25.02.2014 as Zonal Manager, Chandigarh. The claimant/workman was never in the employment of the bank, in fact he was personal driver who drove vehicle earlier and present Zonal Manager mentioned in the claim petition. Mr. Harish Gupta, the Zonal Manager stopped engaging the workman as his personal driver on 06.01.2014 for his personal reasons. Workman/petitioner was never recruited by the respondent-bank therefore, question of termination of the services of the petitioner/workman after giving notice, compensation etc. is of no relevance. The alleged logbook is a register maintained to record details of travel of the Zonal Manager whose vehicle he drove during the period. The workman/claimant was engaged by the Zonal Managers for his personal service purely in personal capacity and bank has no rule to play in the matter. The attendance of the workman was never marked in the attendance register/muster roll of the respondent-bank and monthly payment of his engagement was made from cheque from the saving accounts of the respective Zonal Managers, who engaged the workman as their personal driver from time to time. Thus, the petitioner's claim for wages and reinstatement has no force and the petition is liable to be rejected.

3. Workman Sukhdev Singh has submitted his affidavit Ex.AW1/1 along with copy of the demand notice Ex.W1, photocopy of the alleged logbook Ex.W2. He is cross-examined by the AR of management, where he has accepted in his cross-examination that management-bank did not issue any appointment letter nor any salary slip to him. He has also accepted that his attendance was not marked in the attendance register. Sukhdev Singh workman has further deposed that the logbook produced by him does not bear the signatures of any official of the bank. This witness has denied the suggestion that he was the personal driver of the management from time to time and was never appointed as such by the management.

4. The management has submitted affidavit of Rajinder Borse as Ex.MW1, working as Assistant General Manager, who has stated in his affidavit in the line of the facts alleged in the written statement. This witness has been cross-examined by the learned counsel of the workman. He has deposed in his statement that workman was not driving the vehicle of the bank and bank has no concern with the workman as he was employed by the previous Zonal Managers including last one Mr. Harish Gupta in their personal capacity. So, question of issuing any notice or charge-sheet is not required as per law. Witness Rajinder Borse has further deposed that bank was under obligation to reimburse the expenditure incurred by Harish Gupta and other Zonal Managers regarding the payment of workman to the respective managers during the relevant period. This witness has stated that he does not know anything about the appointment and termination because all is done by the regional management in his personal capacity.

5. I have heard Sh. M.R. Dhiman, AR for the workman and Sh. Sumit Narang, AR for the management as well as perused written arguments filed by both the parties and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned AR of the workman has contended that management had not issued any appointment but the workman worked from 27.10.2008 to 06.01.2014 under the supervision and control of the respondent-bank and served the respective managers of the bank for the official vehicle allotted to them for bank works. Learned AR further argued that there is no dispute that workman has rendered his services during the relevant period of Managers, Assistant Managers and Zonal Managers of the bank and reimbursement is made by the bank to the respective managers. Hence, it will be deemed that workman is the employee of the management and there existed relationship of employer and employee. Learned AR further advancing the arguments, alleged that if the relationship of employer and employee is proved then the burden lies on the respondent/management to prove that the workman has not worked 240 days before the alleged termination by the management-bank in the preceding calendar year which is not proved by the management-bank on the basis of the available record. Learned AR while drawing my attention towards the judgment in the case of **B.A.S.F. India Ltd., Bombay and another Vs. M. Gurusamy and another, Appeal No.472 of 1995, decided on 15.01.2004**, and argued that it is immaterial that workman was paid directly or indirectly by the establishment for the work carried out by him in or in connection with the bank and thereafter he was employee of the bank under the provisions of the Act. Learned AR of the workman has placed reliance in the case of **Royal Talkies, Hyderabad Vs. Employees State Insurance Corporation, arising out of Civil Appeal No.1221244 of 1978, decided on 09.08.1978**.

7. Contrary to this, learned AR of the management contended that it is specifically denied that there does not exist relationship of employer and employee between the workman and management-bank as such, he cannot be treated as workman in the light of the definition given in Section 2(S). Learned AR further argued that there is no dispute that workman was employed by several bank-managers during the relevant period in their personal capacity and paid by the respective managers through cheque from his own saving accounts. Advancing the argument, learned AR further contended that it is the bank who reimburse the respective managers for the payment made by him to the managers as per the provisions of the banking rules hence, it cannot be observed that workman was directly under the supervision and control of the management-bank and was paid his salary as is alleged in the claim statement of the workman. Learned AR would contend that workman himself has accepted that he was neither issued any appointment letter nor paid salary by the management which clearly shows that there did not exist any relationship of employer and employee and there is nothing on record to prove that administrative action and control was with the management-bank. In this connection, learned AR of the management placed reliance of the cases of **Punjab National Bank Vs. Ghulam Dastagir, AIR 1978 SC 481, decided on 11.01.1978**, **Titan Industries Ltd. Vs. Kishan Lal, 137(2007) DLT 566, decided on 04.12.2006**, **Singer Sewing Machine Co. Vs. Presiding Officer, Labour Court, 1998(3) AWC 1729, decided on 28.04.1998** as well as in the case of **N. Veerappan Vs. The Chairman and Managing Director, Punjab & Sind Bank, W.P.No.16147 of 2005, decided on 19.09.2013**.

8. The Hon'ble Supreme Court has settled the law in respect of dispute of workman in case of **Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532**, wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of “workman” as provided in Section 2(S) of the Act. In these circumstances, it stands proved that there existed relationship of employer-employee between the parties.

9. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she worked with the employer for 240 days or more in a calendar year. In this regard reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Mehgajibhai Gavda (2012) 1 SCC 47.***

10. The entire controversy revolve around the dispute regarding the relations of employee and employer between the claimant/workman and respondent-bank. The Hon’ble Supreme Court in the case of ***Bank of Baroda Vs. Ghemarabhai Harjibhai Rabari, Civil Appeal No.4396 of 2003, decided on 17.03.2005***, has given thoughtful consideration relating to the onus and degree of proof for a claim of employment of a workman with the management was examined. The Hon’ble Supreme Court has held that onus of proof is on the claimant/workman who claimed to have been employed by the management. It was also held that the degree of proof will vary from case to case and if the workman has a *prima facie* case, it would be responsibility of the management to rebut the same. Further question arises whether workman has *prima facie* proved his relations directly with the management-bank regarding his engagement. Admittedly, there is no any documentary evidence on record regarding the appointment letter, salary, terms and conditions of service, leave permission etc. filed by the workman in order to prove his relation with the management-bank. The only document on which reliance has been placed by the workman is logbook Ex.W2 regarding which this witness has admitted that the logbook produced by him does not bear the signature of any of the officer of the bank. Thus, relevancy of the document is almost lost. Learned AR of the management contended that in fact this is an entry of the concerned manager travelling in order to claim reimbursement from the bank. The Hon’ble Supreme Court in catena of cases has held that in order to establish the relationship of employer and employee too onus which are necessary relates to the salary/wages paid to the workman and control and supervision. The Hon’ble Supreme Court after analyzing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014***, two well recognized tests to find out the relationship of employee and employer. Though, this is a case pertaining to the contractor and principal-employer but the fundamental principle laid down by the Hon’ble Supreme Court relates with the salary and control and supervision of the work of the employees by the employer. In fact, claim petition is totally silent regarding the payment of wages by the management-bank, salary, letter of appointment etc. by the management-bank. Similarly, workman has not mentioned anything regarding the mode of payment, wages or salary etc. in his affidavit. Thus, the basic feature of holding the relationship of employer and employee is very much lacking not in the pleading but also in the evidence filed by the workman. In this connection, learned counsel of the workman contended that payment of salary was subject to control and supervision of the management and virtually it was paid by the management in the form of reimbursement to the managers who paid the salary/wages of the workman/claimant.

11. Learned AR of the workman has relied on the case of the Hon’ble Apex Court ***Royal Talkies, Hyderabad(supra)*** and ***B.A.S.F. India Ltd., Bombay(supra)***. It is pertinent to mention that the case of ***Royal Talkies, Hyderabad(supra)*** relates with the dispute regarding the payment of EPF contribution of the workmen and as per the provisions of the EPF & MP Act, 1952, the Hon’ble Supreme Court has held that if the contractor has not deposited the EPF remittance of the employer and employee then the principal-employer shall be liable to reimburse all the employer share as well as employee share. So far as the case of ***B.A.S.F. India Ltd., Bombay(supra)*** is concerned, the fact of the case is altogether different because there was evidence in the case that concerned drivers were paid overtime even if the managers used the drivers for company where the drivers were working as normal driver with the company. In that case, drivers were provided dress, footware, monsoon equipment and winter clothing etc. by the company. The workman Sukhdev Singh himself has admitted that the bank did not give him any appointment letter nor any salary slip was issued by the bank to him. He has failed to prove that his attendance was marked in the attendance register contrary to the facts alleged in the claim petition. Thus, there is nothing on record to prove that workman was either paid salary by the management-bank or supervision and control of the workman was with the management-bank. Workman has not stated in his claim statement or the affidavit that who was the person authorized to grant his leave, medical leave etc. in the case of urgency. Thus, the burden which lies on the workman has not been duly discharged by the cogent evidence to prove *prima facie* that he was really engaged by the management-bank. The facts alleged in the written statement as well as affidavit of the management reveals that it is the Zonal Manager Harish Gupta who has stopped engaging the workman/claimant as his personal driver w.e.f. 06.01.2014 on account of personal reasons. This fact has not been rebutted by the workman by filing replication. Similarly, nothing has been stated in the affidavit of the workman/claimant that it is Harish Gupta who has refused to take the services of the workman from the date alleged by virtue of his engagement for personal services. Thus, the evidence, which is on record, it is crystal clear that workman

has not submitted any such oral or documentary evidence on the basis of which *prima facie* relationship of employer and employee may be stated to be proved.

12. Contrary to this, learned AR of the management has placed reliance in the cases of *B.A.S.F. India Ltd., Bombay and another Vs. M. Gurusamy and another, Appeal No.472 of 1995, decided on 15.01.2004*, and *Royal Talkies, Hyderabad Vs. Employees State Insurance Corporation, arising out of Civil Appeal No.1221244 of 1978, decided on 09.08.1978*. The Hon'ble Supreme Court in the case of *Punjab National Bank Vs. Ghulam Dastagir, 1978(I) L.L.J. 312* and *Shivnandan Sharma Vs. The Punjab National Bank Ltd. AIR 1955, SC 1427*, has laid down the procedural test in most cases is as to who exercises control and supervision over the workman. Claimant/workman Sukhdev Singh has stated in his affidavit at Para 4 that he rendered his services under the control and supervision of the bank-authorities and attached with Sh. Gautam Banarjee and subsequent managers. As per affidavit, his attendance was marked in the role of respondent-bank and he was paid wages by the respondent-bank. In order to prove this fact, he has neither submitted any documents regarding direct payment by the respondent-bank as payment of salary of wages, attendance nor summoned any role/register regarding his attendance from the management-bank which makes it clear that in fact his attendance was nowhere marked as he has stated in his affidavit. During the course of arguments, learned AR of workman has accepted that in fact it is the Zonal Manager with whom workman was attached paid salary to the workman and was reimbursed by the management-bank. This is a case put up by the management regarding the payment of salary that as per the provisions of bank rules and regulations, concerned managers were entitled for employing drivers in their personal capacity and reimbursement by the bank regarding the payments and expenses incurred therein. The Hon'ble Supreme Court in the case of *Punjab National Bank Vs. Ghulam Dastagir(supra)*, going through the test of mode of payment, salary, control and supervision the Hon'ble Supreme Court has held that if the two conditions are not proved, it cannot be observed that there exists relationship of employer and employee. In that very case, driver was paid salary by Sh. Sharma as his employer who draw the same grant by way of pay and allowances by the management-bank. Hon'ble Supreme Court held that there was nothing on record to find out nexus between the workman and management. Similarly, case in hand, there is nothing on record that the control and supervision vested in the bank after all the evidence is clearly contrary to the present case also. In the absence of material to make out that the workman was employed by the management was under its control and was paid salary by the bank and otherwise in the establishment of the bank, it cannot be assume that there exists relationship of employer and employee as stated by the workman. The other case laws cited by the respondent-bank are also of the same nature in which workman/driver has failed to prove that he was appointed by the management-bank and payment of salary, supervision and control vested with the management.

10. On the basis of the above observation and evidence on record, I am of the opinion that workman/claimant is failed to prove that there exists relationship of employer and employee, master and servant between him and management-bank by virtue of the services rendered to the concerned managers it cannot be assume or presume in the absence of the proof of salary, supervision and control that he was directly engaged by the management-bank instead denial of taking services of the workman by the Zonal Manager Harish Gupta is a proof that he was employed in a personal capacity and Mr. Harish Gupta, Zonal Manager, was entitled to stop his services.

A. K. SINGH, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2090.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रेटर बैंक प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 1273/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.2019 प्राप्त हुआ था।

[सं. एल-12012/598/98-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2090.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1273/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 28.11.2019.

[No. L-12012/598/98-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present : Radha Mohan Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad
Dated 21st October, 2019

Reference: (CGITA) No. 1273/2004

1. The General Manager,
State Bank of India,
7th Floor, Bhadra, Lal Darwaja,
Ahmedabad – 380001
2. The Zonal Manager,
State Bank of India,
7th Floor, Paradise Complex, Sayajigunj,
Baroda – 394220
3. The Manager,
State Bank of India,
Chawk Bazar Branch, P.B. No. 1,
Surat – 395003
4. The Manager,
State Bank of India,
Salabatpura, Near Kinnari Talkies, Salabatpura Ring Road,
Surat (Gujarat) – 395002

V/s

Mr. Vasantlal Devabhai Patel,
At & Post Magdalla, Behind Bank of Baroda, Bapunagar,
Surat (Gujarat) – 395003

...First Parties

For the First Parties : Shri B.B. Gogia
For the Second Party : Shri P.F. Baxi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/598/98-IR (B-I) dated 20.04.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the concerned workman Shri Vasantlal Devabhai Patel has put in continuous service in the bank as per provisions of Section 25-B?" and

“Whether the action of the management of State Bank of India through its officers in terminating/discontinuing the services of workman Shri Vasantlal Devabhai Patel w.e.f. 16.06.1998 on/with the plea of abolition/cancellation of the waiting list of temporary employees is legal, proper and justified? If not, to what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 20.04.1999 and received from Ministry of Labour and Employment, New Delhi on 09.05.1999 for adjudication and passing the award.

2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 10 on 03.07.2000 and the first party submitted the written statement Ex. 11 on 08.04.2002. The case was listed for cross-examination of second party.

3. Today on 21.10.2019, the second party workman Vasantlal Devabhai Patel and the first party State Bank of India, Surat and others submitted an settlement Ex. 36 stating that the matter has been resolved by way of onetime payment of Rs.200000/- (Rupees Two Lac) in the favour of second party workman Vasantlal Devabhai Patel vide Demand Draft No. 666811 dated 14.10.2019 along with Rs.15000/- (Rupees Fifteen Thousand) in the favour of Shri P.F. Baxi, advocate of second party workman vide Demand Draft No. 666814 dated 14.10.2019 and nothing has been left for further resolution. The said settlement Ex. 36 is read over and explained to the parties. They admitted the terms and conditions of the settlement. Therefore, the settlement Ex. 36 is accepted by the Tribunal.

4. Thus the reference is disposed of in the light of the settlement Ex. 36. The settlement Ex. 36 shall remain the part of the award.

5. The award is passed accordingly.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2091.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 94/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.2019 प्राप्त हुआ था।

[सं. एल-12012/47/2002-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2091.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 94/2010) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 28.11.2019.

[No. L-12012/47/2002-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Radha Mohan Chaturvedi, Presiding Officer, CGIT cum Labour Court, Ahmedabad

Dated 18th September, 2019

Reference: (CGITA) No. 94/2010

1. The Branch Manager,
State Bank of India, Matar Branch, Matar,
Kheda (Gujarat)
2. The Circle Development Officer,
State Bank of India, Bhadra,
Ahmedabad (Gujarat) – 380001
...First Parties

V/s

Shri Mahendra B. Vaghela,
C/o Shri Nalin U. Bhatt, B-201, Sardar Patel Chambers,
Vasant Chawk, Bhadra,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Parties : Shri Y.S. Panchal
For the Second Party : Shri Prabhatsinh Parmar

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/47/2002-IR(B-I) dated 12.06.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of the State Bank of India, Matar Branch, District Kheda in discontinuing the services of Shri Mahendra Kumar Bhalabhai Vaghela w.e.f. 12.04.1997 without following the provisions of Section 25 (F), (G) and (H) of the Industrial Disputes Act, 1947 is justified? If not, what relief the concerned workman is entitled?”

1. The reference dates back to 12.06.2002 and received from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 3 on 09.07.2008 and the first party submitted the written statement Ex. 9 on 03.03.2010. The case was listed for cross-examination of second party workman.
3. Today on 18.09.2019, the second party workman Mahendra Kumar Bhalabhai Vaghela and the first party State Bank of India, Matar and others submitted an application Ex. 17 for taking the matter today on board along with settlement Ex. 18 stating that the matter has been resolved by way of onetime payment of Rs.200000/- (Rupees Two Lac) in the favour of second party workman M. B. Vaghela vide Demand Draft No. 091095 dated 21.08.2019 along with Rs.15000/- (Rupees Fifteen Thousand) in the favour of Shri Prabhatsinh Parmar, advocate of second party workman vide Demand Draft No. 091096 dated 21.08.2019 and nothing has been left for further resolution. The said settlement Ex. 18 is read over and explained to the parties. They admitted the terms and conditions of the settlement. Therefore, the settlement Ex. 18 is accepted by the Tribunal.
4. Thus the reference is disposed of in the light of the settlement Ex. 18. The settlement Ex. 18 shall remain the part of the award.
5. The award is passed accordingly.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2092.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 25/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.2019 प्राप्त हुआ था।

[सं. एल-12012/142/2004-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2092.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 28.11.2019.

[No. L-12012/142/2004-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Radha Mohan Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad

Dated 21st October, 2019

Reference: (CGITA) No. 25/2007

1. The Zonal Manager,
State Bank of India, Zonal Office, Opp. Old Scahivalaya,
Near Taluka Panchayat, Gandhinagar (Gujarat)
2. The Branch Manager,
State Bank of India, Dehgam Branch, Station Road,
Dehgam, Gandhinagar (Gujarat)

...First Parties

V/s

Shri Narandrakumar P. Barot,
C/o Adarsh Mazdoor Union,
S/16, Rajmandir, Near Mahaprabhuji's Bethak, Naroda,
Ahmedabad (Gujarat) ...Second Party
For the First Parties : Shri B.K. Oza
For the Second Party : Shri Bharat R. Mali

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/142/2004-IR (B-I) dated 08.02.2007 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEUDLE

“Whether the action of the management of Zonal Manager, State Bank of India, Zonal Office, Gandhinagar in terminating the services of Shri Narendrakumar Pratapbhai Barot w.e.f. 26.09.2001 without following the provisions of Section 25 F, G and H of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the concerned workman is entitled to and from which date?”

1. The reference dates back to 08.02.2007 and received from Ministry of Labour and Employment, New Delhi on 30.04.2007 for adjudication and passing the award.
2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 9 on 22.04.2008 and the first party submitted the written statement Ex. 10 on 29.07.2008. The case was listed for cross-examination of the second party.
3. Today on 21.10.2019, the second party workman N.P. Barot and the first party State Bank of India, Dehgam and others submitted an application Ex. 19 for taking the matter today on board along with settlement Ex. 20 stating that the matter has been resolved by way of onetime payment of Rs.200000/- (Rupees Two Lac) in the favour of second party workman N.P. Barot vide Demand Draft No. 487288 dated 18.09.2019 along with Rs.15000/- (Rupees Fifteen Thousand) in the favour of Shri Bharat R. Mali, advocate of second party workman vide Demand Draft No. 487289 dated 18.09.2019 and nothing has been left for further resolution. The said settlement Ex. 20 is read over and explained to the parties. They admitted the terms and conditions of the settlement. Therefore, the settlement Ex. 20 is accepted by the Tribunal.
4. Thus the reference is disposed of in the light of the settlement Ex. 20. The settlement Ex. 20 shall remain the part of the award.
5. The award is passed accordingly.

Let two copies of Award are sent to the appropriate Government for the needful and for publication.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2093.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 1265/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.2019 प्राप्त हुआ था।

[सं. एल-12012/384/98-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2093.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1265/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 28.11.2019.

[No. L-12012/384/98-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Radha Mohan Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad

Dated 21st October, 2019

Reference: (CGITA) No. 1265/2004

1. The General Manager,
State Bank of India,
7th Floor, Bhadra, Lal Darwaja,
Ahmedabad – 380001

2. The Regional Manager,
State Bank of India,
Region – III, Zonal Office, 7th Floor, Paradise Complex, Sayajigunj,
Baroda – 394220

3. The Manager,
State Bank of India,
Pandesara Industrial Estate, G.I.D.C. Branch,
Surat – 395003

...First Parties

V/s

Mr. Ganesh Sambhajirao Kadam,
159/16, Pankaj Nagar Society,
Opp. Pujan Raw House, Near Palanpu,
Surat (Gujarat) ...Second Party

For the First Parties : Shri B.B. Gogia
For the Second Party : Shri P.F. Baxi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/384/98-IR (B-I) dated 10.03.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the concerned workman Shri Ganesh Sambajirao Kadam has put in continuous service in the bank as per provisions of Section 25-B?” and

“Whether the action of the management of State Bank of India through its officers in terminating/discontinuing the services of workman Shri Ganesh Sambajirao Kadam w.e.f. 28.11.1997 on/with the plea of abolition/cancellation of the waiting list is proper and justified? If not, to what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 10.03.1999 and received from Ministry of Labour and Employment, New Delhi on 18.03.1999 for adjudication and passing the award.
2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 10 on 03.07.2000 and the first party submitted the written statement Ex. 11 on 22.02.2002. The case was listed for evidence of the second party workman.
3. Today on 21.10.2019, the second party workman Ganesh Sambajirao Kadam and the first party State Bank of India, Surat and others submitted an settlement Ex. 33 stating that the matter has been resolved by way of onetime payment of Rs.200000/- (Rupees Two Lac) in the favour of second party workman Ganesh Sambajirao Kadam vide Demand Draft No. 410521 dated 16.10.2019 along with Rs.15000/- (Rupees Fifteen Thousand) in the favour of Shri P.F.Baxi, advocate of second party workman vide Demand Draft No. 410520 dated 16.10.2019 and nothing has been left for further resolution. The said settlement Ex. 33 is read over and explained to the parties. They admitted the terms and conditions of the settlement. Therefore, the settlement Ex. 33 is accepted by the Tribunal.
4. Thus the reference is disposed of in the light of the settlement Ex. 33. The settlement Ex. 33 shall remain the part of the award.
5. The award is passed accordingly.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2094.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 765/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.2019 प्राप्त हुआ था।

[सं. एल-41012/191/2001-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2094.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 765/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 28.11.2019.

[No. L-41012/191/2001-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court, Ahmedabad

Dated 11th July, 2019

Reference: (CGITA) No. 765/2004

1. The General Manager,
Western Railway, Churchgate, Mumbai – 400001
2. The Divisional Railway Manager,
Western Railway, Pratapnagar,
Baroda (Gujarat) – 394220
3. The Electrical Engineer (TRS),
Western Railway, Electric Loco Shed,
Vadodara Yard, Vadodara (Gujarat)

...First Parties

V/s

Takhatsinh Shankarbhai Solanki,
C/o Shri J.K. Ved,
Sinduri Mata Devasthan, S.T. Nagar Road,
Godhra (Gujarat)

...Second Party

For the First Parties : Shri Rajesh Singh Thakur
For the Second Party : Shri Prabhatsinh Parmar

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/191/2001-IR (B-I) dated 22.03.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDEULE

“Whether the action of the management of Electric Engineer, Electric Loco Shed, Western Railway, Baroda in terminating the services of Shri Takhatsinh Shankarbhai Solanki, Labour by way of removing him from the service w.e.f. 02.12.2000 is justified? If not, what relief the concerned workman is entitled?”

1. The reference dates back to 22.03.2002 and received on 05.04.2002 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. In response to the notice issued to the parties, the second party submitted the statement of claim Ex. 3 on 04.07.2000 and the first party submitted the written statement Ex. 6 on 22.04.2003.
3. The second party workman named Takhatsinh Shankarbhai Solanki has alleged in his statement of claim Ex. 3 that he had been a permanent employee as Khalasi Box Boy in the Electric Loco Shed, Western Railway, Baroda Railway Station. On 18.11.1999, he was served with a charge-sheet by the first party with a charge that he has been absent from duty from 23.09.1999 to 25.10.1999 without observing the leave rules. He has further alleged that he was wrongly charge-sheeted because he had obtained a medical treatment from a private doctor and after recovering from illness, he submitted medical certificate of fitness obtained from Railway Medical Officer to the first party organisation but without considering his medical illness and fitness certificate, he was discharged from duty on 02.12.2000. He moved an appeal before the appellate authority against the discharge order. The same was rejected by the appellate authority by a written order dated 03.04.2001. Thus he has alleged that the discharge order and appellate order was against rules and law. Therefore, he has prayed for reinstatement with back wages declaring the order of discharge from duty dated 02.12.2000 as null and void.
4. The first party Western Railway in his written statement Ex. 6 admitting the fact of second party workman that he had been a permanent employee of the first party submitted that the second party workman was absented from duty for a long period, therefore, after a due process of enquiry, he was ordered to be discharged from duty. He has further submitted that the workman was habitual to remain absent from duty and absented from duty for 363 days from 19.05.1998 to 25.11.2000 without prior permission, therefore, the department was compelled to pass final order of removal from duty. The first party has submitted documents vide list Ex. 2 (a) regarding the enquiry.
5. On the basis of pleadings of both the parties, the following issues arise:

- i. Whether the action of the management of Electric Engineer, Electric Loco Shed, Western Railway, Baroda in terminating the services of Shri Takhatsinh Shankarhai Solanki, Labour by way of removing him from the service w.e.f. 02.12.2000 is justified?
- ii. To what relief, if any, the second party workman is entitled?

6. Issue No. i and ii: As all the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who has submitted his affidavit Ex. 11 reiterating the averments made in the statement of claim and has not said anything contrary to his examination-in-chief. In his cross-examination, he has stated that he moved an application to the supervisor K.J. Makwana for sanctioning of medical leave. He has also stated that due to his duty and work in Diesel Loco Shed, he suffered infection in the hands and also suffered mental depression.

7. The first party submitted the affidavit Ex. 21 of Lalit Khandelwad who was appointed Enquiry Officer in the matter and has stated that the workman was given liberty to appoint his defence council but he did not prefer. But he has not stated in his affidavit that as to why he ignored the medical certificates issued by the private doctor as well as the medical fitness issued by the Medical Officer of Western Railway while in his cross-examination, he has admitted that this workman submitted the medical fitness issued and signed by the Medical Officer of Western Railway but he has not explained as to why he ignored the same. There is no law that a medical treatment conducted by the private doctor cannot become the basis for medical leave. Therefore, the findings given by the enquiry officer and punishment awarded by the appointing authority and rejection of appeal are erroneous.

8. The Supreme Court in Krushnakant B. Parmar V/s Union of India (2012) 3 SC C 178 has held that the enquiry of the enquiry officer who has not given any finding regarding wilful absence and also failed to appreciate the evidence of medical leave, cannot be said to be just and right.

9. Thus in the light of the aforesaid discussions, I come to the conclusion that the order from removal from service of the workman was illegal, unjust and liable to be set aside. The workman deserves to be reinstated with a lump-sum amount of Rs.500000/- (Rupees Five Lac) as arrear of back wages. Thus both the issues are decided accordingly.

10. The first party is directed to reinstate the second party workman Takhatsinh Shankarhai Solanki with a lump-sum amount of Rs.500000/- (Rupees Five Lac) as arrear of wages.

11. The award is passed accordingly.

Let two copies of Award are sent to the appropriate Government for the needful and for publication.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2095.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 1287/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.2019 प्राप्त हुआ था।

[सं. एल-12012/135/99-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2095.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1287/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 28.11.2019.

[No. L-12012/135/99-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present : Radha Mohan Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad
 Dated 21st October, 2019

Reference: (CGITA) No. 1287/2004

1. The Chief General Manager,
 State Bank of India,
 7th Floor, Bhadra, Lal Darwaja,
 Ahmedabad – 380001

2. The Zonal Manager,
 State Bank of India,
 7th Floor, Paradise Complex, Sayajigunj,
 Baroda – 394220

3. The Manager,
 State Bank of India,
 Olpad, Surat – 395003

4. The Manager,
 State Bank of India,
 Chawk Bazar Branch, P.B. No. 1,
 Surat – 395003

...First Parties

V/s

Shri Pravinchandra Motiram Tailor,
 Darji Falia, At and Post Masama, Olpad,
 Surat (Gujarat)

...Second Party

For the First Parties : Shri D.C. Gandhi
 For the Second Party : Shri P.F. Baxi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/135/99-IR (B-I) dated 29.07.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the concerned workman Shri Pravinchandra M. Tailor has put in continuous service in the bank as per provisions of Section 25-B?” and

“Whether the action of the management of State Bank of India through its officers in terminating/discontinuing the services of workman Shri Pravinchandra M. Tailor w.e.f. 30.06.1996 on/with the plea of abolition/cancellation of the waiting list of temporary employees is legal, proper and justified? If not, to what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 29.07.1999 and received from Ministry of Labour and Employment, New Delhi on 17.08.1999 for adjudication and passing the award.

2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 10 on 03.07.2000 and the first party submitted the written statement Ex. 11 on 08.04.2002. The case was listed for hearing of parties.

3. Today on 21.10.2019, the second party workman P.M. Tailor and the first party State Bank of India, Surat and others submitted an settlement Ex. 30 stating that the matter has been resolved by way of onetime payment of Rs.200000/-

(Rupees Two Lac) in the favour of second party workman P.M. Tailor vide Demand Draft No. 666813 dated 14.10.2019 along with Rs.15000/- (Rupees Fifteen Thousand) in the favour of Shri P.F. Baxi, advocate of second party workman vide Demand Draft No. 666812 dated 14.10.2019 and nothing has been left for further resolution. The said settlement Ex. 30 is read over and explained to the parties. They admitted the terms and conditions of the settlement. Therefore, the settlement Ex. 30 is accepted by the Tribunal.

4. Thus the reference is disposed of in the light of the settlement Ex. 30. The settlement Ex. 30 shall remain the part of the award.

5. The award is passed accordingly.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2096.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 1279 / 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.2019 प्राप्त हुआ था।

[सं. एल-12012 / 10 / 99-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2096.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1279/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 28.11.2019.

[No. L-12012/10/99-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Radha Mohan Chaturvedi, Presiding Officer, CGI- cum-Labour Court, Ahmedabad
Dated 21st October, 2019

Reference: (CGITA) No. 1279/2004

1. The Manager,
State Bank of India,
7th Floor, Bhadra, Lal Darwaja, Ahmedabad – 380001
2. The Zonal Manager,
State Bank of India,
7th Floor, Paradise Complex, Sayajigunj,
Baroda – 394220
3. The Manager,
State Bank of India, Nanpura Branch, Nanpura,
Surat – 395003
4. The Manager,

State Bank of India,
Service Branch, Behind Rang Upvan, Surat – 395003

5. The Manager,
State Bank of India,
Chawk Bazar Branch, P.B. No. 1, Surat – 395003
6. The Manager,
State Bank of India, Kawas,
Surat – 395003

...First Parties

V/s

Shri Rameshbhai Shankarlal Kosambiya,
Mandir Mohalla, Village Ichhapore, Taluka Choryasi,
Surat (Gujarat)

...Second Party

For the First Parties	: Shri D.C. Gandhi
For the Second Party	: Shri P.F. Baxi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/10/99-IR (B-I) dated 11.05.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDEULE

“Whether the concerned workman Shri Rameshbhai S. Kosambiya has put in continuous service in the bank as per provisions of Section 25-B?” and

“Whether the action of the management of State Bank of India through its officers in terminating/discontinuing the services of workman Shri Rameshbhai S. Kosambiya w.e.f. 04.07.1998 on/with the plea of abolition/cancellation of the waiting list of temporary employees is legal, proper and justified? If not, to what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 11.05.1999 and received from Ministry of Labour and Employment, New Delhi on 09.06.1999 for adjudication and passing the award.
2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 11 on 03.07.2000 and the first party submitted the written statement Ex. 12 on 07.01.2004. The case was listed for hearing of parties.
3. Today on 21.10.2019, the second party workman Rameshbhai S. Kosambiya and the first party State Bank of India, Surat and others submitted an settlement Ex. 29 stating that the matter has been resolved by way of onetime payment of Rs.200000/- (Rupees Two Lac) in the favour of second party workman Rameshbhai S. Kosambiya vide Demand Draft No. 429844 dated 14.10.2019 along with Rs.15000/- (Rupees Fifteen Thousand) in the favour of Shri P.F. Baxi, advocate of second party workman vide Demand Draft No. 429845 dated 14.10.2019 and nothing has been left for further resolution. The said settlement Ex. 29 is read over and explained to the parties. They admitted the terms and conditions of the settlement. Therefore, the settlement Ex. 29 is accepted by the Tribunal.
4. Thus the reference is disposed of in the light of the settlement Ex. 29. The settlement Ex. 29 shall remain the part of the award.
5. The award is passed accordingly.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2097.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 1285 / 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.2019 प्राप्त हुआ था।

[सं. एल-12012 / 139 / 99-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2097.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1285/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 28.11.2019.

[No. L-12012/139/99-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Radha Mohan Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad
Dated 21st October, 2019

Reference: (CGITA) No. 1285/2004

1. The Chief General Manager,
State Bank of India,
7th Floor, Bhadra, Lal Darwaja,
Ahmedabad – 380001
2. The Zonal Manager,
State Bank of India,
7th Floor, Paradise Complex, Sayajigunj,
Baroda – 394220
3. The Branch Manager,
State Bank of India,
Vyara Branch,
Surat – 395003

...First Parties

V/s

Shri Harishbhai B. Chitte,
Maliwad, Village and Post Vyara,
Surat (Gujarat) ...Second Party

For the First Parties : Shri D.C. Gandhi
For the Second Party : Shri P.F. Baxi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/139/99-IR (B-I) dated 29.07.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDEULE

“Whether the concerned workman Shri Harishbhai B. Chitte has put in continuous service in the bank as per provisions of Section 25-B?” and

“Whether the action of the management of State Bank of India through its officers in terminating/discontinuing the services of workman Shri Harishbhai B. Chitte w.e.f. 31.01.1999 on/with the plea of abolition/cancellation

of the waiting list of temporary employees is legal, proper and justified? If not, to what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?"

1. The reference dates back to 29.07.1999 and received from Ministry of Labour and Employment, New Delhi on 17.08.1999 for adjudication and passing the award.
2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 7 on 03.07.2000 and the first party submitted the written statement Ex. 8 on 25.02.2002. The case was listed for cross-examination of second party.
3. Today on 21.10.2019, the second party workman Harishbhai B. Chitte and the first party State Bank of India, Surat and others submitted an settlement Ex. 28 stating that the matter has been resolved by way of onetime payment of Rs.200000/- (Rupees Two Lac) in the favour of second party workman Harish B. Chitte vide Demand Draft No. 605327 dated 10.10.2019 along with Rs.15000/- (Rupees Fifteen Thousand) in the favour of Shri P.F. Baxi, advocate of second party workman vide Demand Draft No. 605328 dated 10.10.2019 and nothing has been left for further resolution. The said settlement Ex. 28 is read over and explained to the parties. They admitted the terms and conditions of the settlement. Therefore, the settlement Ex. 28 is accepted by the Tribunal.
4. Thus the reference is disposed of in the light of the settlement Ex. 28. The settlement Ex. 28 shall remain the part of the award.
5. The award is passed accordingly.

RADHA MOHAN CHATURVEDI, (I/c) Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2098.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 06-A-/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.2019 प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2098.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06-A-/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 28.11.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court, Ahmedabad
Dated 24th June, 2019

I.D. Application (CGITA) No. 06-A/2012

Hiteshkumar Balkrishnabhai Joshi,

Valsad Abrahama, Rajnagar Nandanvan Society,
 Plot No. 49, Bapa Sitaramani Vat, Atul Pardi Road,
 Valsad (Gujarat)

...Applicant

V/s

The Chief General Manager,
 State Bank of India,
 Local Head Office, Lal Darwaja,
 Ahmedabad (Gujarat) – 380001

...Opponent

For the Applicant : Shri Amrish Patel

For the Opponent : Shri S.N. Mishra

ORDER

1. This is an application Ex. 1 moved by the applicant/second party workman, hereinafter referred to as applicant, against the opposite party State Bank of India through its Chief General Manager, Local Head Office, Lal Darwaja, Ahmedabad, hereinafter referred to as 'SBI' alleging that his services were terminated on 17.06.2010 by the appointing authority on the ground that he was not having requisite qualifications for the appointment in the sub-ordinate cadre of SBI which is enclosed as Annexure I. He preferred Special Civil Application in High Court against SBI which was disposed of by the High Court with a direction to approach proper forum. The said order is annexed as Annexure II. The applicant in the light of the High Court's order moved the Regional Labour Commissioner (RLC) but the Regional Labour Commissioner did not dispose of the reconciliation proceeding within 45 days, therefore, he moved this application directly to this Tribunal. The brief facts of application is that the applicant was appointed as a Peon in the month of June/July 1997 in Ayojan Nagar Branch of Ahmedabad of erstwhile State Bank of Saurashtra, now acquired by the State Bank of India. He was later appointed on daily wages/temporary basis in the M.G. Road Branch, Valsad of State Bank of Saurashtra, hereinafter referred to as 'SBS' w.e.f. 04.08.1997. He was assigned the work of peon cum messenger to do all kind of works like photocopying, assistant the clerical staff and to serve tea and water to them. Initially, he was paid wages at the rate of Rs.25/- per day which were raised to Rs.50/- per day later till 31.08.2007. Thus he served the SBS for more than 10 years continuously. While serving the SBS, he came to know that there is a scheme available in SBS for regularising the employees like him in the part-time sub-staff elevation in 1/3rd of wage scale basis, therefore, he submitted an application on 20.08.2007 to the Branch Manager of Valsad Branch of SBS which in annexed as annexure III with this application disclosing his age/date of birth that is 09.04.1976, education 9th standard pass along with school leaving certificates and mark-sheets of examination. His said application was forwarded by the Manager to the Regional Office of SBS at Surat and the Regional Office on 05.09.2007 forwarded his application to Zonal Office of SBS for approval. The Assistant General Manager, Regional Office, SBS vide his letter dated 24.09.2007 informed the Branch Manager regarding the approval of payment of 1/3 wage scale of sub-ordinate staff to the applicant w.e.f. 01.09.2007 as per existing Head Office guidelines (Reference H.O. Circular No. PER/8 of 2005-06 dated 21.06.2005 for fixation). It has been further stated in the later that you are advised to elevate Shri Joshi in 1/3rd wage scale (Rs.4060-Rs.8910). The applicant has further alleged that he received a letter dated 26.10.2007 from the SBS, Head Office, Bhavnagar addressed to the Branch Manager of Valsad Branch giving details thereby for allotment of permanent PF Code No. to the new member of SBS PF Trust in which also his date of birth clearly stated that 03.04.1976. This letter dated 26.10.2007 received by the applicant from Head Office of SBS at Bhavnagar is annexed herewith as Annexure V. He has further alleged that he was paid 1/3rd of total wages payable in regular wage scale from 01.09.2007 to 31.12.2007. The post of permanent peon was vacant in the Branch, therefore, he was asked to work as full time peon and he was also paid full salary and wages in the regular pay scale since November 2007 till the date of termination of his service on 17.06.2010. He has further alleged that after acquisition of State Bank of Saurashtra by the State Bank of India, the appointing authority/Assistant General Manager (Admin.) of State Bank of India, Head Office, Surat terminated his service w.e.f. 17.06.2010 mentioning that his appointment was made against the basis norms of appointment. The SBS has also allotted him a permanent provident fund code vide letter dated 20.10.2007 annexed as Annexure V.

The termination order is reproduced as under:

"To

Shri Hitesh B. Joshi,
 C/o State Bank of India,
 M.G. Road, Valsad Branch
 Dear Sir,

As you are aware you were appointed in erstwhile State Bank of Saurashtra since merged in State Bank of India, it is observed that the requisite norms of appointment in sub-ordinate cadre viz. eligibility norms like date of birth, past experience etc. were not followed at the time of your initial appointment. Therefore, you were not eligible for appointment in the Bank. As such your services cannot be continued in the Bank.

In view of the above, your services are hereby terminated with effect from 17.06.2010

In compliance of the provisions of Section 25 F of the Industrial Disputes Act, 1947, in terms of the provisions of the Section 25 F (a) you are herewith being paid one month's wages in lieu of notice, for the notice period. Accordingly, a banker's cheque no. 918596 for Rs. 8315/- (Rupees Eight Thousand Three Hundred Fifteen Only) is enclosed.

In terms of the provisions of the Section 25 F(b), you are herewith being paid compensation equivalent to of fifteen days average pay for every completed year of continuous service or any part thereof in excess thereof. Accordingly, banker's cheque no. 918595 for Rs. 12474/- (Rupees Twelve Thousand Four Hundred Seventy Four Only) is enclosed.

Please acknowledge with date the receipt of this letter along with aforesaid Bankers cheque on duplicate of this letter.

Yours faithfully,

Appointing Authority
Assistant General Manager (Admin.)”.

He has further alleged that the aforesaid termination order was unjust, improper, illegal, against the principle of natural justice and also in-violation of Article 14, 16 and 21 of Constitution of India. He has further alleged that there was a settlement dated 20.09.2007 between the SBI and its employees and also the employees of State Bank of Saurashtra.

The Clause 5 (e) of the said settlement provides as under:

“(e) The period of service rendered by SBS employees, till the appointed date of merger, shall be counted as equivalent service rendered in SBI for determining the eligibility for various terminal benefits such as pension, provident fund, gratuity, as well as promotion, seniority, allowance carrying positions etc. except where it is specifically excluded in this settlement.”

Thus in the light of the aforesaid averments, the applicant/second party workman has prayed for quashing the termination order dated 17.06.2010 with a direction to pay his arrear of wages with 12% interest and litigant cost of Rs.25000/- and any other relief as the Tribunal deems fit.

2. The opposite party SBI submitted the written statement Ex. 4 giving the para-wise reply of application Ex. 1 denying all the averments and justifying the termination order.

3. On the basis of pleadings of both the parties, the following issues arise:

- i. Whether the termination order dated 17.06.2010 passed by the State Bank of India, the opposite party against the applicant was just and legal?
- ii. To what relief, if any, the applicant is entitled?

4. **Issue No. i and ii:** As all the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the applicant who submitted his affidavit Ex. 5 reiterating the averments made in the application Ex.1. In his cross-examination, he has stated on oath that he was issued appointment letter by SBS as a permanent employee on the post of peon. His salary was paid as a regular employee and not through vouchers. He did not request the Branch Manager to make him sub-ordinate staff. He received the letter Annexure II to list of documents vide list Ex. 8. Thus this letter is marked as Ex.10. He was not asked to submit his birth certificate and educational qualification certificate at the time of sending him letter Ex. 10. He received the cheque of amount of Rs.8315/- which he has not submitted in the Bank for credit.

5. The opposite party did not prefer to lead any oral evidence; however, the details of salary from May 2009 to May 2010 are filed. The statement of EPF contribution for the year 2007, 2008, 2009 and 2010 are also submitted.

6. The opposite party submitted the written argument with the copies of orders/judgements reproduced as under:

- i. National Fertilizers Ltd. and others V/s Somvir Singh, (2006) 5 Supreme Court Cases 493
- ii. Jain Studios Ltd. V/s Shin Satellite Public Co. Ltd. (2006) 5 Supreme Court Cases 501

7. The advocate for the applicant argued that the whole evidence discloses that the applicant was appointed as a regular employee in the State Bank of Saurashtra and also applicant was absorbed as a regular employee in State Bank of India when the SBS was merged/amalgamated in SBI. Thus after amalgamation/merger of SBS into SBI, this applicant became regular employee of SBI, therefore, a regular employee cannot be terminated simply through a letter that he does not have the requisite eligibility and qualifications of the post. He must have been given the opportunity of hearing of defending himself against such action.

8. It is an admitted fact that SBI has taken over the SBS by way of acquisition/merger. It is also admitted fact that vide Clause 5 (e) of the settlement dated 20.09.2007 between State Bank of India, Employees Federation of State Bank of India and the State Bank of Saurashtra that all the employees of SBS shall be treated as at par with the SBI. Thus as soon as this applicant acquired the status of regular employee of SBI, then termination of his service is a major punishment and it is a basis law that no one can be punished by way of termination of service without giving the opportunity of hearing to the said regular employee. In this case, no such opportunity of hearing to defend such action is given to the applicant, therefore, the impugned order dated 17.06.2010 is illegal and against the basis principle of law. Therefore, the applicant is entitled for reinstatement w.e.f. 17.06.2010 with all back wages and retirement benefits. In case, the applicant has passed the age of superannuation, then he will be given all the arrear of back wages with all retirement benefits w.e.f. 17.06.2010. Both the issues are decided accordingly.

9. The order is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2099.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत पेट्रोलियम कापोरिशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 48/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.11.2019 को प्राप्त हुआ था।

[सं. एल-30012/5/2010-आईआर (एम)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2099.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/2010) of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 26.11.2019.

[No. L-30012/5/2010-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.48/2010

Registered on:-20.08.2010

Jaihinder Singh S/o Bholi, R/o House No.FCA No.43, Near Durga Mandir,
Garg Colony, Ballabgarh, Faridabad (Haryana).

...Workman

Versus

M/s Bharat Petroleum Corporation Ltd. LPG Plant Piyala,
Ballabgarh, District Faridabad.

...Management

AWARD

Passed on:-04.11.2019

Central Government vide Notification No. L-30012/5/2010-IR(M) Dated 05.08.2010, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of Management of BPCL, Piyala Plant in terminating the services of Sh. Jaihinder Singh, General workman w.e.f. 1/2/2005 is just, fair and legal? To what relief the workman is entitled to and from which date?”

1. Both the parties were served with notices. The workman appeared and filed its claim statement, alleging therein that he was appointed as general workman on 12.03.1990 with the management and was posted in LPG Plant, Piyala, Ballabgar and drawing a salary of Rs. 25,000/- per month. Due to conspiracy, the workman was made to sit in iron stool whole the day and he has only two choices either to keep on sitting on the iron stool throughout the day or to submit resignation. The atrocities were kept on increasing day by day. The workman was not even permitted to attend call of the nature and he was guarded by two or three persons all the time. Shri Pavan Kumar and Shri Rajesh Gautam kept on visiting him after short intervals to repeat their aforesaid threats and to pressurize him to submit his resignation and the workman applied leave for five days but the management refused. The management served a totally frivolous and imaginary charge-sheet dated 07.03.2002 upon the workman which was followed by second charge-sheet dated 16.03.2002. The workman was never allowed to defend himself. The workman had to make complaints against the enquiry officer from time to time as he was not permitted to cross-examine the witnesses. The entire enquiry proceedings were merely an eye wash and mockery of law and against the principles of natural justice. When the workman was called upon to submit his written statements/arguments by the enquiry officer, he immediately gave bent to his mind and explained the above situation to the enquiry officer but of no use. The workman was held guilty of the charges by the enquiry officer vide his report dated 14.08.2003 whereby he held the workman guilty of the charges leveled against him in the said two charge-sheets. It is worth mentioning here that the workman was made to tender unqualified apology while submitting his explanation as well as subsequent apology at the instance of some employers and the union leaders. The enquiry officer was in hand and glove with the management and he never permitted the workman to cross-examine the witness of management properly and effectively. The witnesses related to charge-sheet dated 16.03.2002 failed to give any substantial evidence against the workman and the workman was dismissed vide order dated 01.02.2005 against which the workman filed an appeal to the Chairman and Managing Director that was too dismissed vide order dated 01.01.2006. The workman served a demand notice dated 11.05.2006 before the Conciliation Officer of Haryana Government and the same was rejected by the Haryana Government. Then the workman was preferred a CWP No.15830 of 2007 before the Hon'ble Punjab & Haryana High Court and the same was also rejected by the Hon'ble Punjab & Haryana High Court vide order dated 28.08.2008. Therefore, it is prayed that the workman be reinstated in service with continuity of service along with all other consequential benefits.

2. Management filed its written statement, alleging therein, that the workman was appointed as General Workman on 12.03.1990 and posted at Piyala LPG Plant located at District Faridabad(Haryana). The workman was in a habit of indulging in various acts of misconducts therefore, he was issued 10 letters in this respect. The workman in his explanation admitted the charges still corporation accorded opportunity of hearing by contemplating domestic enquiry by impartial enquiry officer and the charges leveled against the workman were proved and keeping in view the gravity of the charges, the corporation dispensed the services of the workman. The contents of para 1 of the claim statement is denied by the management as it is a matter of record. The claimant also submitted a letter apologizing for the misconducts committed. The workman at initial stage admitted the charges to be correct and requested the corporation to pardon him. It is worthwhile to point out here that there is registered trade union representing the genuine grievance and cause of the employees, formed in the corporation and there cannot be by any stretch of imagination any issue of torture or harassment to one or all of the employees employed with corporation as wrongly alleged. The story of torture and harassment is nothing but mere concoction and cooked up material by the claimant in order to bail him out the erroneous and shocking conduct committed by him during the course of employment. The workman is making the allegation against Mr. Telang as he was the witness to the charges w.r.t. the incident of 14.02.2002 wherein the claimant had used choicest of abusive language against him and another officer. The non-examination of Mr. Mahendar Jadhav will not affect the course of enquiry as no prejudice has been caused to the claimant. The enquiry officer asked the workman not only to cross-examine the witness of the corporation but also to lead to his evidence. The charges were proved in the enquiry and considering the gravity of the misconduct and also the opportunities provided to the claimant in past to mend his ways, the corporation was left with no other option but to discharge the claimant from the services of the corporation. Therefore, it is prayed that reference be answered in favour of the management and against the workman holding that termination on the basis of misconduct duly proved in the course of enquiry is fully justified in order and applicant is not entitled to any relief in any manner whatsoever.

3. The workman has filed its rejoinder, reiterating the same facts alleged in the claim petition as such, it does not required to be repeated again.

4. Workman has filed its affidavit as evidence but he did not turn up for cross-examination. Meanwhile, it is informed by the AR Mr. Rohit Ahuja of the workman that workman has died. In pursuance of the information given by the AR of the workman, an opportunity is given to the AR to move substitution application on behalf of the LRs but that order is not complied by the ARs of the workman in spite of the opportunity given by my learned Predecessor. Lastly, AR of the workman Mr. Rohit Ahuja made a statement on 17.02.2016 that he has not got any instruction on behalf of the workman in spite of the letter given to the workman and order accordingly.

5. Management has filed affidavit of Ashwani Kumar Chubey, Deputy Manager of the management, who has proved his affidavit along with annexure R-1 on Oath.

6. Heard the learned counsel of the management Mr. Vivek Kaushal and perused the file.

7. Perusal of file and zimini order dated 14.05.2015 transpires that learned AR of the workman Rohit Ahuja had informed my learned Predecessor that workman has died and opportunity for submitting substitution application be given accordingly. Learned Presiding Officer allowed the request of the learned AR but in spite of the several opportunities, no application is moved by the proposed LRs to be substituted as party in claim petition. Lastly, on 17.02.2016 learned AR of workman Mrs. Rohit Ahuja made a statement before the Tribunal that he could not obtain any instructions on behalf of the workman despite issuing letters through registered post and order be passed accordingly. Even than opportunity is given to the LRs of the workman to move substitution application. Sh. Tarun Dhingra, new AR of the workman made his presence and requested for time for compliance of the Court order regarding substitution of the deceased workman. Unfortunately, none appeared on subsequent dates, forcing Tribunal to closed the opportunity and pass the order.

8. As per settled provisions of the substitution, an application is required to be moved within 90 days from the death of the deceased workman. This opportunity is not availed by the LRs of the deceased workman Jaihinder Singh, forcing the Tribunal to pass the order according to law. Since abetment proceeds automatically by implication of law hence, proceeding of the case is abated accordingly. Resultantly, no award on merit.

9. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2100.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एयरपोर्ट्स अथॉरिटी ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 45/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.11.2019 को प्राप्त हुआ था।

[सं. एल-11011/13/2013-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2100.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 45/2014) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Airports Authority of India and their workman, which was received by the Central Government on 25.11.2019.

[No. L-11011/13/2013-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 2: NEW DELHI
PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No. 45/2014

Date of Passing Award : 15th October, 2019

All India President,
 Airports Authority of India Mazdoor Sangh,
 Flat No.166, DDA SFS Flats,
 Sector 1, Pocket-II, Dwarka,
 New Delhi 110075.Workmen/Claimant Union

Versus

The Executive Director (HR),
 Airports Authority of India,
 Rajiv Gandhi Bhawan,
 Safdarjang Airport,
 New Delhi 110003.Management/Respondent

Appearances :-

None : For the Workman
 Shri Manish Sehrawat , A/R : For the Management

AWARD

This Award shall decide a reference which was made to this Tribunal by the appropriate Government vide letter No.L-11011/13/2013-IR(M) dated 03.4.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short “the Act”) for adjudication of an industrial dispute, terms of which are as under:

‘Whether non payment of productivity linked incentive and ex gratia in lieu of bonus to the employees of Airport Authority of India with effect from the year 2010-11 in the tune of circular No.3/2011 dated 21.1.11 of management is fair and legal ? If not, what relief the workmen concerned are entitled to ?’

2. Both parties were put to notice and the claimant Union filed statement of claim, with the averments that payment of Productivity Linked incentive in lieu of bonus/ex gratia was introduced w.e.f. 1/4/1996 by the Management vide its letter dated 22/12/1997 and was extended from time to time to offer appropriate incentives to its employees and enable them to give their best for enhancing efficiency and quality of service. However, the Management all of a sudden stopped disbursing the Productivity linked incentive in lieu of bonus/ex gratia from the financial year 2010-11, by issuing a letter/circular dated 3/5/2012, quoting the provisions of Section 2(13) of the Payment of Bonus Act, 1965 and referred to clause (iii) of para 1 of Department of Public Enterprises O.M. dated 6/7/2011 but it deliberately ignored sub-section (ii) of Section 31-A of Payment of Bonus Act. It is pleaded that the Management has earned profit before tax of Rs.1346 crores in FY 2010-11; Rs.1364 crores in FY 2011-12 and Rs.1337 crores in FY 2012-13 and also paid dividend proportionately to the Govt. of India but no paid ex-gratia/PLI sharing to the employees in an arbitrary manner. It has been prayed that award be passed in favour of the claimant Union/workmen for payment of PLIC and ex gratia in lieu of bonus from the financial year 2010-11.

3. Management resisted the claim of the Claimant Union, by filing written reply, stating that Productivity Linked Incentive (PLI) was not paid for the financial year 2010-11 as there was a proposal for introduction of Proficiency Related Pay (PRP) for non-executive. However, a payment of Rs.15,000/- each for the year 2011 and 2012 and Rs.10000/- each for the year 2013 and 2014 has already been paid to the Non executives of the management establishment as an advance amount against PRP like scheme. As such, the claim, of the claimant Union is unfounded and baseless. Prayer has been made for dismissal of claim petition.

4- The claimant Union filed rejoinder, reiterating its own case and denied the allegations made in the written statement.

5- On the pleadings of the parties, following issues were framed on 27/3/2016 :-

- 1) Whether non payment of productivity linked incentive and ex gratia in lieu of bonus to the employees of Airport Authority of India with effect from the year 2010-11 in the tune of circular No.3/2011 dated 21.1.11 of management is fair and legal ? If not, what relief the workmen concerned are entitled to ?
- 2) To what relief the workmen are entitled to and from which date ?

6- In order to prove the case, the claimant Union examined WW1 Shri Harender Tiwari, General Secretary of claimant Union who filed his affidavit Ex.WW1/A and relied on documents Ex.WW1/1 to Ex.WW1/4. On the other hand, the Management examined Shri I.P.Agarwal, AGM as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 and Ex.MW1/2.

7- I have heard Shri Manish Sehrawat, A/R for the Management as none appeared on behalf of the claimant Union and have also gone through the records carefully. My findings on the above issues are as follows.

Issue No.1 and 2 :-

8- Both these issues being co-related are taken up together as the same can be disposed of conveniently by common discussion.

9- Short question arises for consideration is whether action of the Management in denying the productivity linked incentive and ex gratia in lieu of bonus to the workmen/employees with effect from the year 2010-11 is unjust and illegal, as claimed by the claimant Union.

10- I may mention that affidavit of WW1 Shri Harender Tiwari is in line with the averments made in the statement of claim. He admitted in his cross examination that AAI Employees Union is the recognized Union with the Management and that his Union (claimant Union) was never declared successful in any election. As per his testimony, his Union secured only 159 votes out of 10800 votes polled in 2013 Elections. As per the Management policy, the recognized Union is competent to negotiate with the Management. He admitted that PLI was received by the workmen till the financial year 2009-2010. After the year 2010, the Management is paying in advance “PRP” from the year 2011. He also admitted that 46 percent of the basic pay is paid to the workmen as allowances besides 3.5% of basic pay as festival allowance. He showed his ignorance that the “PLI” scheme has been done away and in place of that, the “PRP” scheme was introduced.

11- Affidavit Ex.MW1/A of Shri IP Aggarwal is in conformity with the averments made in the written statement. None turned up on behalf of the claimant Union to cross examine him. As such, testimony of MW1 Shri IP Aggarwal has gone unchallenged and unassailed. As per unrebutted version of MW1, Productivity Linked Incentive (PLI) was not paid to the workmen for the financial year 2010-11 as there was a proposal for introduction of Proficiency Related Pay (PRP) for non-executive and payment of Rs.15,000/- each for the year 2011 and 2012 and Rs.10000/- each for the year 2013 and 2014 has already been paid to the Non executives of the management establishment as an advance amount against PRP like scheme.

12- It emerges from the evidence adduced on record by the parties that the claimant Union is not an elected Union. Only recognized/elected Union was/is competent to participate in the negotiations with the Management concerning the demand of the employees. Recognized/Election Union of the workmen has not agitated the issue for the reasons best known to them. The Management has done away with the scheme of “PLI” in 2011 and in lieu thereof it has been paying “Proficiency Related Pay” to the employees. To my mind, action of the Management for doing away with “PLI” scheme can not be considered to be unfair labour practice, inasmuch as in lieu thereof the workmen /employees are being paid “Proficiency Related Pay” to the workmen. It is fairly settled that ex-gratia payment made by an employer is neither in the nature of production bonus nor incentive bonus nor customary nor any statutory bonus. A workman can not claim ex-gratia as a matter of right nor it is governed by any rules, statutory or otherwise. Reference in this respect may be made to the decision of Allahabad High Court in the case of **M/s. Muir Mills Kanpur Vs. Presiding Officer, Labour Commissioner & others, 2008 LLR 649.**

13- Having regard to the aforesaid facts & circumstances of the case, this Tribunal is of the view that non payment of productivity linked incentive and ex-gratia in lieu of bonus to the employees of Airport Authority of India with effect from the year 2010-11 can not be considered as unfair or illegal and resultantly, the Claimant Union is not entitled to any relief whatsoever. Both these issues are, therefore, decided against the claimant Union.

ORDER

The reference is answered on the contest against the claimant Union. In the peculiar facts & circumstances of the case, the claimant Union is not entitled to any relief whatsoever. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

15th October, 2019

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2101.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 9/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.11.2019 को प्राप्त हुआ था।

[सं. एल-30011/42/2006-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2101.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2008) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Limited and other and their workman, which was received by the Central Government on 21.11.2019.

[No. L-30011/42/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI**

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/9 of 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

- (1) B. P. C. L.
- (2) M/S. TRUST US SECURITY SERVICES

The Manager,
M/s. BPCL [AVN STN] Chicalim,
Vasco-Da-Gama,
Goa – 403 802.

M/s. Trust US Security Services,
90, 6th Cross, CIL Layout,
Cholanayakanatalli RT Nagar P.O.,
Bangalore – 560 032.

AND
THEIR WORKMEN

The General Secretary,
Gomantak Mazdoor Sangh, Shetye Sankul,
3rd Floor, Tisk Ponda, Goa.

APPEARANCES:

FOR THE EMPLOYER : (1) Mr. P.J. Kamat, Advocate
(2) Mr. S.B. Bangi, Representative

FOR THE WORKMEN : Mr. P. Gaonkar, Representative

Mumbai, dated the 16th October, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-30011/42/2006 – IR (M) dated 25.01.2008. The terms of reference given in the schedule are as follows :

“Whether the demand of the Gomantak Mazdoor Sangh, Ponda, Goa for regularization of service of Sh. Mohidin M. Sangam, Driver-cum-Operator in the service of M/s. Bharat Petroleum Corporation Ltd., is just and legal ? If so, what relief the concerned workman is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices.

3. The second party Sangh filed statement of claim Ex.8. According to the second party and their workman first party No.1 have employed the workman in their Chicalim station which is for the purpose of supplying the aviation fuel to the airlines at Dabolim Airport, Dabolim, Goa. The concerned workman was employed in addition to the workers working at Vasco-Da-Gama, Goa.

4. It is contention of the second party and their worker that first party No.1 is having 7 oil tankers owned by it for providing aviation fuel. In order to operate said oil tankers the first party have employed the workers. Second party workman was one of the driver-cum-operator who was employed to operate the oil tanker. The said oil tankers were owned and operated by the first party and to supervise the said operations the first party was having their own employees with one station incharge. Overall supervision i.e. allocation of work maintenance of the attendance record and other work related to supervision was done by the regular employees of first party No.1. The duty allocation was done by the supervisor of first party No.1. Sanctioning of the leave was done by the incharge of the fuel aviation. His normal duties were commenced at 9.00 a.m. to 6.30 p.m. every day. First party No.1 always maintained the attendance register of second party workman and other workmen on duty.

5. It is the case of the second party and their worker that allocation of work was always done by the station incharge at Chicalim from 1999 onwards. The first party No.1 was paying monthly wages directly in the bank. However, somewhere in 2003 the wages were shown as paid by the contractors. Even the workman was issued the pass to enter into area of Dabolim airport. As such nature of relationship between first party No.1 BPCL and second party workman was that of employer and employee. His place of work and fuel tankers and premises was owned and operated by first party No.1. As such the workman was working for first party No.1.

6. According to the concerned workman he has requested for regularization of his service in the month of July '05. However, he was refused the employment w.e.f. 1.8.05. He personally approached the station incharge for allowing him to resume the duty, but he was not allowed. He approached the union namely Gomantak Mazdoor Sangh and raised the dispute through the union vide letter dt. 14.8.05. On receipt of the letter the ALC fixed the conciliation proceedings. No settlement could be arrived. Conciliation failed and on receipt of the failure report the appropriate Govt. was pleased to reject the reference. However, the union approached the Hon'ble H.C. for issuing the direction to appropriate Govt. for making the reference. Hon'ble H.C. was pleased to direct the appropriate Govt. to refer the said dispute for adjudication, hence this reference.

7. Second party workman is therefore asking for regularization of service and for extending the benefits of permanent workman. He is also asking for wages for the period for which he was not allowed to join the duties. He is thus asking for reinstatement with full back wages.

8. First party No.1 BPCL resisted the claim by filing written statement Ex.17 contending therein that the employer employee relationship does not exist between the first party No.1 and the concerned workman. As such the Gomantak Mazdoor Sangh has no locus-standi to espouse the cause of second party workman as the union is not operating in any of the locations of BPCL nor BPCL has entered into any negotiations at any point of time with the said union.

9. It is then case of the first party that aviation station at Dabolim airport supply aviation fuel to airlines at Goa airport. The business of supply of aviation fuel is purely personal and caters to the requirements of non-scheduled

commercial flights. The fluctuation of demand of aviation fuel at Dabolim airport and unpredictable operations, forced first party No.1 against going in for any further increase in the manpower and as such there is no requirement of further manpower at its aviation station at Goa. First party has engaged concerned workman as an independent contractor on yearly contract to provide operation assistance for the period of one year w.e.f. 1.1.01 to 31.12.01 on payment of annual consolidated amount of Rs.34800/- . The said contract is for specific period and would come to an end by efflux of time. The first contract was terminated by efflux of time on 31.12.01 and fresh contract was made with him for the period of one year from 1.1.02 to 31.12.02 on payment of annual consolidated amount of Rs.38400/- . On expiry of the contract on 31.12.02 first party again extended the contract for 3 months upto 31.3.03. Thus the contract between the first party No.1 and concerned workman came to an end by closing hours of 31.3.03.

10. It is case of the first party No.1 that after expiry of extended contract the second party workman joined the services of M/s. Trust US Security Services, Bangalore, an independent contractor and worked with the said contractor upto 31.7.05. He reportedly stopped attending to his duties with the contractor w.e.f. 1.8.05 and made a representation to ALC Vasco-Da-Gama, Goa through Gomantak Mazdoor Sangh. He was never employed by the first party. There is no contract of employment between second party workman and the first party. He was the employee of M/s. Trust US Security Services, Bangalore from April '03 to July '05. As such termination of his services by first party No.1 did not arise. As such the engagement of the second party workman was contractual appointment. It came to an end of the contract. He would not be entitled to be absorbed or regularized in the services or made permanent since the original appointment was not made by following due process of selection as envisaged by the rules. It has thus sought dismissal of reference.

11. Second party workman by filing rejoinder reiterated that the union has every right to espouse his cause before the appropriate authority.

12. First party No.2 by filing written statement Ex.23 contended that as a contractor it is in business of providing certain services to various factories and estts. by using his own manpower. Contractor is having contract with first party No.1 for refueling the aircraft at Dabolim Airport, Goa. There is valid agreement entered by and between first party No.1 and the contractor for the specific period to provide certain services to first party No.1. In order to comply with the job contract, the contractor engages its own workers and they have been deployed at the respective places where the contractor is having contracts. Workers have been appointed by the contractor and he has full control & supervision over the work of the workers. Workers have been paid salary and other pre-requisite by the contractors. Contractor raises monthly bills on the first party No.1 based on job work completed by the contractor. Second party workman was employed by the contractor for operating the refuel of the first party No.1. He was working under the contractor's supervision and control and was paid by the contractor. He stopped attending his duties w.e.f. 1.8.05 and raised dispute before ALC.

13. It is then contended that admittedly second party workman was the employee of contractor first party No.2 from April '03 to July '05. He abandoned the services w.e.f. 1.8.05. He is not entitled to any relief. First party No.2 has thus sought the rejection of reference.

14. Second party workman by way of rejoinder Ex.24 contended that he has never worked under the said contractor.

15. Following issues are framed at Ex.25. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the second party was employed by first party ?	No
2.	Whether there is employer-employee relationship between them?	No
3.	Whether the second party can be regularized as prayed ?	No
4.	What Order ?	As per final order

Reasons

Issue No.1 & 2 :-

16. So far contentions go, it is contended by the first party No.1 that there is no employer employee relationship between the first party No.1 and concerned workman. In this respect it is necessary to refer the documents on record. Ex.56 is the quotation of the concerned workman for the work to be carried out by the first party in respect of maintenance of statics facility and refueling operations. It appears that in pursuance of that quotation the concerned workman was given part time contract for assistance in maintenance of statics facility and refueling OPS for the period of one year from 1.1.01 to 31.12.01 and the consideration payable to him for the said work was Rs.34,800/- . This contract is accepted by the concerned workman vide Ex.54 since admittedly it bears his signature. Ex.57 is also a quotation of the concerned workman for the work of maintenance of statics facility and refueling operations and then as

per Ex.45 it appears that part time contract was given to him for assistance in maintenance of statics facility and refueling OPS for the period of one year from 1.1.02 to 31.12.02 for Rs.38,400/- which shall be paid to him on monthly basis @ Rs.3200/- p.m.

17. The concerned workman in his cross examination admitted his signature on document at Ex.57. The document at Sr. No.6 along with list Ex.27 is a contract between first party No.1 and the concerned workman. It is at Ex.59. It is a contract in respect of contract work for driver-cum-operator and various part time jobs. Ex.60 is the letter given to the concerned workman in respect of forwarding the monthly salary for the month of July '05 mentioning therein that he had been absenting from duties without any prior intimation w.e.f. 1.8.05. Ex.61 is the copy of register for wages bearing the name of the concerned workman showing that the wages were being paid to him by the contractor and not by the first party.

18. From these documents it can be seen that the first party No.1 had engaged independent contractor on yearly contract to provide operation assistance for the period of one year on annual consolidated amount of Rs.34,800/- and then after termination of the said contract by efflux of time fresh contract was made with concerned workman for the period of one year from 1.1.02 to 31.12.02 on payment of annual consolidated amount of Rs.38,400/-. It appears therefore that on expiry of contract on 31.12.02 the first party No.1 extended the contract for over 3 months upto 31.3.03. There is no document on record to show that the concerned workman was employed by the first party No.1 to operate the oil tankers of first party No.1. The documentary evidence on record clearly mention that the concerned workman was engaged as an independent contractor and lastly his contract came to an end from closing hours of 31.3.03.

19. Even then the Learned counsel for the concerned workman submitted that oil tankers were owned and operated by first party No.1 and to supervise the said operations first party No.1 was having their own employees with one station incharge. Submission is to the effect that overall supervision of the said work was done by the supervisors of first party No.1 but then there is no document to show that the concerned workman was an employee of the first party No.1 or that his work is being supervised by the supervisors of first party No.1.

20. On the contrary the documents on record clearly speaks on the point that after expiry of the extended contract, concerned workman joined the services of M/s. Trust US Security Services, Bangalore who was an independent contractor. For it is explicit, from the document at page 6 & 7 of Ex.27 [Ex.59] that the contract was given to M/s. Trust US Security Services, Bangalore for driver-cum-operator and various part time jobs for the period from 1.4.03 to 31.3.04. Even though the concerned workman in his cross examination has denied that M/s. Trust US Security Services, Bangalore had paid him the wages from 4/03 to 6/05, we have document to show that the wage sheet Ex.61 was maintained by M/s. Trust US Security Services, Bangalore to whom the contract was given by first party No.1 and the name of the concerned workman is appearing in the wage sheet Ex.61 showing that he received the wages from first party No.2 contractor and signed the said wage register.

21. Besides, the documents at Ex.62 would show that the contractor first party No.2 submitted the statement of contribution of PF & ESI for the period from 4/03 to 9/05 mentioning therein the names of workmen employed by the contractor. It also clearly mentions that the concerned workman was the employee of the contractor first party No.2 to whom the I.P. No. was allotted in respect of said contract. If all these documents are being taken into consideration then the fact remains that the concerned workman was never employed by first party No.1. He was the employee of first party No.2 after expiry of the earlier contract allotted to him which came to an end by efflux of time on 31.3.03 and then he joined the services of M/s. Trust US Security Services, Bangalore and worked with the said contractor by 31.7.05.

22. Realising this difficulty the Learned counsel for the concerned workman submitted that the said contract between first party No.1 and first party No.2 is sham & bogus which was made by them only to deprive the concerned workman the benefits of regularization of the services.

23. It is not possible to accept this submission of Learned counsel for the concerned workman since at the first instance I would observe that no dispute was raised by the concerned workman in respect of these contracts between first party No.1 and first party No.2. As per letter dt. 14.8.05 the union has raised the dispute before ALC Vaso-Da-Gama in respect of refusal of employment. Nowhere it is stated in the schedule of referenced that the dispute as regards the contract as sham & bogus was raised by the union and referred for adjudication. When no dispute about the same was raised by the workman and even the State Govt. has not referred the question in that respect for adjudication then in that circumstances mere contention of the union in the statement of claim without any evidence to show that the contract between first party No.1 and first party No.2 was sham & bogus is no evidence at all.

24. In the context, Learned counsel for the first party No.1 company seeks to rely on the decision in case of Bombay Union Journalist V/s. Hindu Bombay – AIR – 1963 – SC – 318 to submit that the test whether individual dispute got converted into a natural dispute is dependent on whether on the date of reference the dispute was taken up and supported by the union of the workmen of the employer against whom the dispute was raised by individual workman or by an appreciable number of such workmen. As per his submission when no such individual dispute is raised by the concerned workman for regularization of services with first party No.1 then the demand made by him cannot be granted.

25. From the documents on record the fact has established that the concerned workman was initially engaged as an independent contractor on yearly specified contract to provide operation assistance for the specific period on part time

basis on terms & conditions mentioned in the contract which automatically came to be terminated on 1.4.03 by efflux of time. Thereafter he was engaged by the contractor and there does not exist employer employee relationship between first party No.1 and the concerned workman. Even there is evidence on record that contractor was owing the tanker bearing registration No. GA – 02 – V – 6020 and was operating the same for six years which clearly shows that it was the contractor first party No.2 who was operating the contract work and was having control and supervision over his employees.

26. Even then the Learned counsel for the concerned workman submitted that he was given entry pass for entering into the premises of airport and that would show that he is the employee of first party No.1. In this respect also it is made clear that entry into the airport premises whether he is contractor, whether he is permanent employee, whether he is a contract employee or casual employee is only on valid pass issued by the competent port authority. The said pass can be obtained by the company after application in the prescribed form. The issuance of said pass is necessary to have entry into the airport premises and that is not the document showing employer employee relationship. The purpose for which the entry pass is given is very limited that is to have entry into the airport premises for the contractor, contract employee or casual employee whoever he may be.

27. Considering all these facts and documents on record it has been established that the concerned workman was not the employee of first party No.1. There was no employer employee relationship in between first party No.1 and the concerned workman. Besides, his recruitment as an employee of first party No.1 was not made as per recruitment policy circulated by first party No.1 being public sector organization. As per the said policy the vacancies are to be filled internally through transfer re-deployment, re-designation and promotion. For fulfilling the vacancies, it is necessary to notify the vacancies to local employment exchange and the vacancies should normally be filled through employment exchange. Certain posts are reserved for physically challenged persons, Ex-servicemen, SC, ST, OBC which are to be notified as per the presidential directives especially when it is mandatory to strictly follow the presidential directives with regard to reservations of vacancies to SC, ST & OBC. As per procedure appropriate test, interview and medical examination is necessary and the employee cannot be appointed as against the permanent vacancy without following such procedure. There is absolutely no document to show that the concerned workman was engaged by first party No.1 by following the recruitment procedure. In the context hand can be led on the decision in case of Secretary, State Karnataka & Ors. V/s. Umadevi & Ors. – 2006 – II – CCR – 261 – [SC] wherein it is held that any public employment has to be in terms of constitutional scheme. In para – 38 of the said judgment it has been observed that when a person enters a temporary employment and gets engagement as a contractual and casual worker and the engagement is not based on proper selection as regularized by relevant rules and procedure, such person cannot invoke the theory of legitimate expectation for being confirmed in the post when the appointment to the post could be made only by following procedure for selection and in consultation with public service commission.

28. Considering all these facts, I find that the union has not established that the concerned workman was the employee of first party. As such there is no employer employee relationship between first party No.1 and the concerned workman. Hence the above issues are therefore answered accordingly as indicated against each of them in terms of above observations.

Issue No. 3 & 4 :-

29. In view of my finding to the issue No.1 & 2, second party workman is not entitled to any relief. Hence order.

ORDER

Reference is rejected with no order as to costs.

Date: 16.10.2019

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2102.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलूर के पंचाट (संदर्भ संख्या 159/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/50/2007-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2102.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 159/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 21.11.2019.

[No. L-29012/50/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 11TH NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 159/2007

I Party

Sh. C.N. Nanjundegowda,
S/o Nanjegowda,
Basavanpura Village,
Kembalu Post,
Bagur Hobli,
Channarayapatna Taluk
Hassan District - 573 111.

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M. G. Road,
BANGALORE - 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Vedamurthy

AWARD

The Central Government vide Order No. L-29012/50/2007-IR(M) dated 17.12.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the punishment of dismissal imposed on Sh. C.N. Nanjundegowda with retrospective effect from 10.11.1998 by the management of Mysore Minerals Ltd. w.e.f. 08.06.1999 is justified? If not, to what relief the workman is entitled to?”

1. The dispute is raised by the 1st Party workman Sh. C.N. Nanjundegowda Ex-employee of the 2nd Party claiming that, he joined the service of 2nd Party on 08.07.1985 at his mining unit Haladahalli Chromite Mines, Gandasi Hobli, Arasikere Taluk, Hassan District. During the year 1997-1998 he remained absent due to health problem, which he developed as Industrial Hazard; he had applied leave to the Mines Manager and sought sanction of sick leave; without sanctioning sick leave they refused employment to him w.e.f 10.11.1998, he approached the Mines Manager and requested to sanction the sick leave and permit him to work, the mines manager directed him to affix thumb impression on a blank white paper, under the pretext that same is required for sanction of leave by the Head Office; being ignorant of the pros and cons 1st Party affixed his thumb impression and was told to approach after 2-3 weeks. He approached the 2nd Party after 3 weeks during 3rd week of July 1997; the 2nd Party handed over a letter to him stating that his resignation w.e.f 26.10.1997 is accepted. His effort made with the 2nd Party did not yield any result; after 2-3 years the operation of the 2nd Party Mines stopped and the employees were shifted to Haladahalli Mines. So far, he has not withdrawn his EPF money and he is demanding for employment, he has not submitted resignation voluntarily, his signature is obtained fraudulently; the order of termination is not from prospective date but from the retrospective effect i.e. from the date of availing sick leave; there is no 3 months notice or notice pay; without issuing charge sheet and without due process of law he is terminated from service. His Date of Birth is 01.03.1965 and he is entitled to work till 01.03.2024; the procedure contemplated by Rule 24.0 and 33.0 of Certified Standing Orders / Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules for termination / imposing major penalties is violated. Hence, the termination is illegal; he is unemployed and facing financial hardship.

2. The 2nd Party at the initial stage filed their counter statement as if they are addressing the claim of a workman who is discharged on medical ground before attaining the age of superannuation. Subsequently they filed an application under Order VI Rule 17 R/w Sec 151 of CPC proposing the amendment to their counter statement that he tendered

resignation w.e.f. 20.06.1997 being a Government organisation there was no occasion for the Manager to obtain signature on the blank paper; he should have taken necessary action against the Manager if he had taken signature at the blank paper; at no point of time he requested for reinstatement; his resignation is accepted vide letter dated 13.11.1997 and was intimated to him on 18.11.1997; after accepting his resignation all retirement benefits are settled.

3. The application was allowed and the counter statement is amended. However, amended counter statement is not filed.

4. As per the order sheet dated 13.04.2012 the 2nd Party was directed to submit whether there was a Domestic Enquiry? If so to produce the enquiry records, otherwise to file a memo that there was no Domestic Enquiry. It is from the order sheet of 08.05.2012 that the 2nd Party counsel made submission that there was no Domestic Enquiry and filed a memo to that effect. It is thereafter they filed the application under Order VI Rule 17 R/w Sec 151 of CPC to amend the counter statement etc. Years passed by without any progress in the case; on 05.11.2014 affidavit evidence of the management witness was filed by replacing the affidavit evidence of the earlier witness. In his affidavit evidence MW-1 averred to the effect that after medical examination the workman was found with a wound mark on his left hand, and was terminated from service on the ground of medically unfit....in view of the acute ill health of the 1st Party there was no alternative but to terminate him from service. At the request of the 1st Party cross examination of the witness was adjourned. Even after several adjournments neither he is cross examined nor discharged without cross examination or his affidavit evidence was discarded for not tendering for cross examination.

5. The 1st Party in his affidavit evidence reiterated the allegation to the effect that he had availed sick leave for few days and after recovery when he approached the Mines Manager for sanction of leave, he refused employment on 10.11.1998; the manager further obtained his thumb impression etc. There was no cross examination to the witness, as in the case of MW-1 neither his cross examination is taken as nil nor his affidavit evidence is discarded.

6. Despite several opportunities was given none of the parties advanced arguments. The pleading of the 2nd Party as set out in their counter statement is contrary to the evidence adduced by them. While it was pleaded that he was removed from service for his voluntary resignation, no documents substantiating the said contention was placed. Contrarily in the affidavit evidence of MW-1 it was stated that he was removed from service since he was found medically unfit. This contention since contradictory to their own pleading cannot be counted upon. That apart no documents pertaining to the Medical Test, Termination Order is produced. In either way 2nd Party failed to justify their action i.e. dismissal of the 1st Party workman Sh. C N Nanjundegowda w.e.f 10.11.1998. In the given circumstance there is no other go except to direct the 2nd Party to reinstate him in the service with 80% back wages.

AWARD

The reference is accepted.

The management of MML / 2nd Party is directed to reinstate the 1st Party workman Sh. C N Nanjundegowda to his original post with continuity of service and 80% of the back wages.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 11th November, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2103.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलूर के पंचाट (संदर्भ संख्या 158/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/46/2007-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2103.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 158/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 21.11.2019.

[No. L-29012/46/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

DATED : 11TH NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 158/2007

I Party

Sh. Rajaiah,
S/o Late Javaraiah,
Balehalli, Balagutte Post,
Bagur Hobli,
Channarayapatna Taluk,
Hassan District - 573 116.

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M. G. Road,
BANGALORE - 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Vedamurthy

AWARD

The Central Government vide Order No. L-29012/46/2007-IR(M) dated 03.12.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the punishment of dismissal imposed on Sh. Rajaiah by the management of Mysore Minerals Ltd. w.e.f. 08.06.1999 is justified? If not, to what relief the workman is entitled to?”

1. The dispute is raised by the 1st Party workman Sh. Rajaiah, Ex-employee of the 2nd Party claiming that, he joined the service of 2nd Party on 07.03.1982 at his mining unit Bhaktarahalli Chromite Mines, Channarayapatna Taluk, Hassan District. During the year 1997-1998 he remained absent due to health problem, which he developed as Industrial Hazard; he had applied leave to the Mines Manager and sought for sanction of sick leave; after recovery he reported to duty but was refused employment; his Date of Birth is 15.08.1963 and he is entitled to work till 15.08.2022; 2nd Party had not issued any notice or charge sheet and without following the due procedure of law they have illegal terminated him.

2. The 2nd Party contested the claim, the tone of their counter statement was as if addressing the claim of a workman who was discharged on medical unfitness before attaining the age of superannuation. Subsequently they filed an application under Order VI Rule 17 R/w sec 151 of CPC proposing the contention that he was very irregular in attending the duty and remained continuously absent without seeking leave or permission; they conducted an enquiry as per law and terminated him service w.e.f 08.06.1999; at no point of time he requested the 2nd Party to recall the order of termination.

3. The application was allowed and the counter statement is amended. However, amended counter statement is not filed.

4. As per the order sheet dated 13.04.2012 the 2nd Party was directed to submit whether there was a Domestic Enquiry? If so to produce the enquiry records, otherwise to file a memo that there was no Domestic Enquiry. It is from the order sheet of 08.05.2012 that the 2nd Party counsel made submission that there was no Domestic Enquiry and filed a memo to that effect. It is thereafter they filed the application under Order VI Rule 17 R/w sec 151 of CPC to amend the counter statement etc. Years passed by without any progress in the case; on 05.11.2014 affidavit evidence of the management witness was filed by replacing the affidavit evidence of the earlier witness. In his affidavit evidence MW-1 averred to the effect that after medical examination the workman was found with a wound mark on his left hand, and was terminated from service on the ground of medically unfit....in view of the acute ill health of the 1st Party there was no alternative but to terminate him from service. At the request of the 1st Party cross examination of the witness was adjourned. Even after several adjournments neither he is cross examined nor discharged without cross examination or his affidavit evidence was discarded for not tendering for cross examination.

5. The 1st Party in his affidavit evidence reiterated that in the year 1997-98 he suffered Hernia due to Industrial hazard; 2nd Party failed to provide basic amenities during working hours, he underwent surgery and applied for leave.... After recovering from illness he reported to duty but was refused employment; he is orally terminated from service w.e.f. 08.06.1999.

6. The pleading of the 2nd Party as set out in their counter statement is contrary to the evidence adduced by them. While it was pleaded that he was removed from service for his unauthorised absence after holding an enquiry, no

documents substantiating the said contention was placed. Contrarily in the affidavit evidence of MW-1 it was stated that he was removed from service since he was found medically unfit. This contention since contradictory to their own pleading cannot be counted upon. That apart no documents pertaining to the Medical Test, Termination Order is produced. In either way 2nd Party failed to justify their action i.e. dismissal of the 1st Party workman Sh. Rajaiah w.e.f 08.06.1999. In the given circumstance there is no other go except to direct the 2nd Party to reinstate him in the service with 80% back wages.

AWARD

The reference is accepted.

The management of MML / 2nd Party is directed to reinstate the 1st Party workman Sh. Rajaiah, Token No. 29 to his original post with continuity of service and 80% of the back wages.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 11th November, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2104.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत पेट्रोलियम कापोरिशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलूर के पंचाट (संदर्भ संख्या 36/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.11.2019 को प्राप्त हुआ था।

[सं. एल-30012/13/2010-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2104.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2010) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Limited and their workman, which was received by the Central Government on 21.11.2019.

[No. L-30012/13/2010-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 15TH NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 36/2010

I Party

Sh. K. Hanumanthu,
S/o Sh. Kalappa,
R/o House No. 1-3-74,
Station Good Shed Road,
Raichur - 584 101.

II Party

1. The Territroy Manager,
BPCL, Near Desur
Railway Station Zad,
Shahapur PO,
Belgaum District - 590 014.
2. The Senior Operation Officer,
BPCL, Raipur
Raichur - 584 103.

Appearance

Advocate for I Party : Mr. S.B. Mukkannapaa
Advocate for II Party : Mr. B.C. Prabhakar

AWARD

The Central Government vide Order No. L-30012/13/2010-IR(M) dated 20.08.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of management of Bharat Petroleum Corporation Ltd., Raichur Depot in terminating the services of Shri K. Hanumanthu, Casual Labour w.e.f. 07.05.2009 is justified? To what relief the workman is entitled?"

1. The dispute is raised by the 1st Party workman who is the ex-employee of the 2nd Party. His claim is, he was working as Watchman in the Office of the Senior Operation Officer of the 2nd Party Corporation against the existing vacancy from 1989 on daily wage basis; he was covered under the ESI scheme; after rendering 20 years of service he was orally terminated w.e.f 07.05.2009 for no reason; he has served continuously for more than 240 days in a year as contemplated by sec 25-B of 'the Act'; prior to refusal of employment no prior notice was issued and mandatory procedure of sec 25F of 'the Act' was not complied; ever since the date of his termination he is without employment.

2. The claim is contested on the following ground -

that the 2nd Party was engaging casuals in the year 1989 to meet some exigencies in work; the casuals were engaged on requirement basis; 1st Party was engaged as a causal labourer intermittently during 1989-2005 depending on the requirement for jobs like Tank Lorry Helper, Security Guard and other miscellaneous jobs; since there was no exigency for employing casual workmen the services of the 1st Party as a casual worker ceased in the year 2005; his engagement was intermittent and not continuous; his engagement as casual did not exceed 240 days in any of the calendar year. From July 2005 to November 2008 as and when required, he provided services as a self-employed service provider on retainer fee for jobs like Assisting in TLF Gantry, Tank Farm Operations Liaison with Goods Shed Office. On 15.12.2008 tenders were invited by the 2nd Party for annual job contract for depot maintenance at Raichur Depot; one Sh. Lakshmana was the successful bidder in the said tender; a agreement was entered into between the parties on 04.02.2009 as per the terms of the agreement total maintenance charges payable to him by 2nd Party was Rs. 8,500/- per month from February 2009 1st Party was working as contract worker under the contractor Sh. Lakshmana. Since the contract work was not satisfactory, the contract agreement was terminated on 07.05.2009; the cessation of his service under the contractor Sh. Lakshmana is not a termination of service by the 2nd Party. He stopped attending the work subsequent to 07.05.2009; he never held any permanent post in the 2nd Party; there is no employer employee relationship; it is not an Industrial Dispute. The allegations made by him in his claim statement are not admitted.

3. Both parties have adduced their respective evidence.

4. To substantiate their stand, the 2nd Party examined its Deputy Manager and produced 129 documents, they are all Cash Payment Vouchers / Casual Payment Sheets, Cash Payment Sheets commencing from 06.07.1999 onwards, Statement showing payment of the Ex-gratia to the casuals commencing from 1998 to 2005. In none of the documents Sh. K. Hanumanthu is shown to have worked continuously for more than 240 days in a calendar year. Further 1st Party has raised bills as service provider and has received the amount under vouchers. Among other things the important documents are the agreement entered into between Sh. Lakshmana and 2nd Party dated 04.02.2001 (Ex M-127) and the termination of contract vide notice dated 07.05.2009 (Ex M-129). None of these documents were disputed during the cross examination of MW-1 neither there was any contradiction during the rebuttal evidence of the 1st Party workman.

5. During the cross examination of the 1st Party he admits that (pertaining to Ex M-1 to Ex M-81) he has put his signature on the revenue stamp in the casual payments sheets; ex-gratia amount was paid instead of bonus from 1985 to 2005; since there was no sufficient work with the 2nd Party in the year 2005 they stopped taking casual labourers; he has worked as a individual service provider; along with Sh. Lakshmana he has raised the bill as service provider. From 2005 to 2008 he was the service provider, Sh. Lakshmana applied for the tender in the year 2008 and was assigned contract. The 2nd Party discontinued the contract with Sh. Lakshmana w.e.f 07.05.2009 since his performance was not satisfactory.

6. The pleading, coupled with oral and documentary evidence un-mistakenly make out the case that at no point of time he rendered continuous service i.e. for 240 days in a calendar year as contemplated by sec 25-B of 'the Act' enabling him to press into action the mandatory provisions of sec 25-F of 'the Act'. Though he claims that he was orally terminated from service w.e.f 07.05.2009, on his own showing that was the date on which the contract between the 2nd Party and Sh. Lakshmana was terminated. Naturally 1st Party since had worked for Sh. Lakshmana the contractor, he was no more the employee of the 2nd Party. The 2nd Party is not bound to answer his claim. His engagement for intermittent period on need basis would not accrue any right in his favour to seek reinstatement with consequential benefits. Neither he is appointed at any point of time nor terminated; hence there is no question of probing into the justifiability of the alleged termination of the service w.e.f 07.05.2009. There is no merit in his claim.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 15th November 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2105.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलूर के पंचाट (संदर्भ संख्या 25/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.11.2019 को प्राप्त हुआ था।

[सं. एल-17012/2/2009-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 28th November, 2019

S.O. 2105.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2009) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 21.11.2019.

[No. L-17012/2/2009-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 11TH NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 25/2009

I Party

Sh. F. S. Baligar,
Since Deceased by LR's

1(a) Smt. Sarvamangala,
W/o Late. F. S. Baligar,
No. 125/3,
Siddalingeswara Housing Society,
Behind Vikasnagar, Hosur,
Hubli.

2(a) Smt. Lalitha Ashok Kodli,
D/o Late. F. S. Baligar,
No. 125/3,
Siddalingeswara Housing Society,
Behind Vikasnagar, Hosur,
Hubli.

3(a) Smt. Aditti,
D/o Late. F. S. Baligar,
No. 125/3,
Siddalingeswara Housing Society,
Behind Vikasnagar, Hosur,
Hubli.

II Party

The Senior Divisional Manager,
LIC of India,
Divisional Office, Jeevan Prakash,
Dharwad Division P.B. No. 16,
College Road,
Dharwad (Dt.) – 580001.

Appearance

Advocate for I Party : Mr. G.V.P. Reddy

Advocate for II Party : Mr. G.N. Harish

AWARD

The Central Government vide Order No. L-17012/2/2009-IR(M) dated 02.06.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the order of removal from service imposed on Sri. F. S. Baligar by the management of LIC of India, Dharwad is legal and justified? To what relief the workman is entitled?”

1. The dispute was raised by the 1st Party against his Former Employer / the 2nd Party against the punishment imposed on him, thereby, removing him from service. During the pendency of the proceedings before this Tribunal, the workman expired and his Class-I Legal Heirs are on record.

2. The fact is, the workman had rendered 33 years of service with the 2nd Party. He was kept under suspension vide order dated 05.08.2002, followed by a charge sheet dated 03.10.2003. Domestic Enquiry was conducted on the charges. After conducting enquiry into the charges, the Enquiry Officer submitted his report holding the workman guilty of the charges. Acting on the Enquiry report, he is dismissed from service.

The 1st Party workman challenged the fairness of the Domestic Enquiry and lack of opportunity etc., to defend himself from the charges during the enquiry and contends that the enquiry findings are perverse. He challenges the punishment order as arbitrary, severe, hard, disproportionate and extreme.

3. The 2nd Party denied all the allegations levelled against in the Claim Statement, Enquiry Report and also the procedure of enquiry and his challenge to the punishment order. They contended that, Domestic Enquiry was conducted properly by observing the principles of natural justice and the enquiry report is based on the evidence adduced by both the Parties. It is further stated that, the misconduct committed by him involved huge amount of Rs. 11,54,000/- under LALGI / IRBP schemes which was sponsored by the Government of India and he is removed from service vide order dated 29.08.2005 in terms of Regulation 39 (1)(f) of LIC of India (Staff) Regulations, 1960; before imposing the punishment order, he was issued show cause notice proposing the punishment but he did not submit his explanation, the punishment order is legal and valid.

4. On the rival contentions, touching the fairness of the Domestic Enquiry a Preliminary Issue was raised, tried and adjudicated holding the Domestic Enquiry as fair and proper. Thereafter, the wife of the deceased workman adduced evidence about the financial problems and hardship encountered by the family consequent upon the punishment imposed on her husband.

Argument is addressed by Sh. GVPR; written argument is submitted by the 2nd Party.

5. The 1st Party was served with the charge sheet dated 03.10.2003. He was alleged of 8 charges;

Firstly, conspiring with others and instigating them to fabricate false Integrated Rural Development Program (IRDP)/Landless Agricultural Group Insurance Scheme (LALGI) claim documents with forged rubber stamps of fictitious institutions and processing the same.

Secondly, accepting the claim papers through unauthorised channels leading to fictitious claim.

Thirdly, failure to scrutinize the papers properly by violating the relevant rules governing the settlement of IRDB / LALGI Claims.

Fourthly, processing the claims submitted in the names of deceased persons (8 instances are cited).

Fifthly, accepting unlawful gratification on a pro-rata basis on each unlawful settlement of claim.

Sixthly, possession of unauthorised rubber stamps and cheques.

Seventhly, misleading the corporation to settle 314 fraudulent claims, resulting in financial loss of Rs. 11.54 lakhs.

Eighthly, running a chit fund and engaging in money lending and borrowing transaction on interest.

Perused the enquiry records which were marked during adjudication of Preliminary Issue as Ex M-1 to Ex M-26 through MW-1, the Officer of the 2nd Party; what I observe from the enquiry records is, the Enquiry Officer instead of recording the statements as deposed by the witnesses has recorded the summary of the enquiry proceedings of the day. Twelve exhibits marked as PE-1 to PE-12 (viii) are found in the enquiry record.

6. It transpires from the Domestic Enquiry records that, the 2nd Party had lodged a complaint against the workman to the jurisdictional Police and after investigation the Police submitted ‘B’ report to the Court and thus, the criminal

proceedings concluded. The revision petition filed thereon, to the Revision Court, was not entertained. The 1st Party had filed a suit before the Civil Court to stall the Domestic Enquiry proceedings and the fate of the suit is not made known.

7. The Enquiry Officer has shown in his report that 12 annexures are enclosed with the report. The first enclosure is the charge sheet marked as PE-1 and same is marked before this Tribunal as Ex M-1. Documents PE-1 and PE-2(i) are the Photostat copies of a statements of the persons / conspirators who joined their hands with the 1st Party, concocted the documents with the 1st Party and received the benefits of illegal things. As regards other enclosures are concerned I have a difficulty. The document marked as Ex M-2 before this Tribunal during the trial on Preliminary Issue, does not bear any marking labelled during the Domestic Enquiry. They were submitted before this Tribunal as "CLAIM FORMS found in the drawer, 24 (Nos)". Document marked as Ex M-4 before this Tribunal does bear Exhibit number marked by Enquiry Officer, it is said to be a statement made by the deceased workman admitting allegations. Document marked as Ex M-3 before this tribunal is marked during the enquiry as PE-4, it is titled as membership book and contains the details of one beneficiary namely Sh. Kasthuri Hanumantha and the subsidiary released in his favour and the last date of payment made towards the loan. Ex M-5 marked before this Tribunal was marked as PE-7 by enquiry Officer (Page 139-163 of enquiry records) they are twelve cheques for Rs. 5,000/- each, released in favour of the beneficiaries. Ex M-6 marked before this Tribunal were documents marked as PE-8 (i) to (iii), PE-10 (i), (ii) and (iii). PE-13, before Enquiry Officer, those are the documents pertaining to chit transaction. PE-10 (i) is a letter allegedly written by the workman demanding gratification from the beneficiary under illegal claim. PE-10 (ii) and (iii) are the reply addressed to him by two of the fraudsters. PE-11(i) and (ii) are the lists of members of the chit group. PE-12 (i), (ii) and (viii) marked as M-7 before this Tribunal are the payment voucher of the beneficiaries from the Department. PE-13 is the Photostat copy of the chit rules and also the payment register.

The enclosures to the enquiry report though referred to the list of items found in the table drawer of the workman, no such list could be traced from the enquiry records. The enquiry proceedings are haphazardly arranged; only two witnesses were examined in respect of the charge No. 8 pertaining to the chit business run by the workman. Though, the examination chief statements of these witness is recorded their cross examination is not recorded. From the evidence of these witnesses it emerges that, both witnesses were the members of the chit group. It is evident that while causing seizure of those documents (marked as Ex M-2 before this Tribunal), they have not drawn any mahajar in the presence of witnesses.

All through, the 1st Party tried to project before the Enquiry Officer that it was not his duty to process the claim forms and he did not enjoy the official position to sanction the claims. With regard to the discrepancy in processing false claims in death cases or double claims, his defence was due to rush of work such mistakes could have happened. There is no evidence from any of the concerned Officials that he was directly receiving the claim forms in violation of the procedure.

8. During the enquiry proceedings of 28.04.2004, to prove the charge No. 1, one Official of 2nd Party was examined who only stated that, he was present at the time of outsider submitting the statement and the atmosphere was cordial at that time.

With regard to the charge No. 2 regarding directly receiving the claim forms, the Branch Manager was examined and this witness also stated to the extent that he was present at that time when the outsider's statement was recorded and cordial atmosphere was there.

The above evidence will not take the prosecution case anywhere. Though strict rules of evidence Act is not expected in a Domestic Enquiry and '*proof beyond reasonable doubt*' is not the parameter for appreciation of evidence, the basic principles of the Evidence Act cannot be compromised. On the top of everything so called *statements of outsiders* are not found in the enquiry record. No evidence is produced to demonstrate that, 317 false claims are settled due to the fraudulent act of the 1st Party workman. Giving a margin to all the dents to the poor quality of evidence, what remains is, the 1st Party indulged in running the chit scheme illegally, the workman never disputed running the chit group, his defence was there were other promoters to the said chit group also. The Enquiry Officer has also recorded that he was carrying on the chit business without any permission from the Office thus, violating regulation 27 of the Staff Regulation and the said finding cannot be faulted with.

Two statements of the outsiders were stressed in the Enquiry Report as evincing his conspiracy with them. The Enquiry Officer has accepted these statements; in this regard he has recorded in his report that he had acceded to the request of the 1st Party that, those witnesses have to be examined as witnesses and had permitted the workman to produce those outsiders as his witnesses; but the 1st Party failed to produce them as his witnesses. The Enquiry Officer also observes that, the outsider's statement does not provide detailed account of the fraud and modus operandi of the

employee. It is evident that the Enquiry Officer lost sight of the fundamental principle of Evidence Act that; it is for the party who alleges a fact to prove the said fact also. Instead of calling upon the Management to prove the statements relied, he has found fault with the CSE for not examining the witnesses.

The Enquiry Officer observes that the workman has admitted his misconduct in his statement addressed to Senior Deputy Manager (Ex M-4). But said statement being a vital document and core of proof, should have been marked on identification either by the addressee or any witness before whom the said letter was written by him. At the later stage said letter was disputed by the workman as written under compulsion and coercion. In the circumstance, the Enquiry Officer ought not have counted upon said letter. The finding of the Enquiry Officer except charge No. 8 is founded on sketchy and fragile evidence which cannot be endorsed. The enquiry report is hypothetical and not based on evidence. It is also perverse for having been founded on facts which are not proved during the enquiry. He could not have acted on papers which were not produced in accordance with the procedure to Law. Consequently, the punishment order imposed on the workman, in ordering the recovery of Rs. 11,54,000/- as a penalty towards the financial loss caused to the 2nd Party and dismissing him from service is not legal.

Admittedly, he has served for more than three decades and there is no reference to his past records. The Enquiry Officer has neither discussed nor recorded his finding for charge No. 8. The Disciplinary Authority in their show cause notice have not called upon the workman why he shall not be held guilty of charge No. 8, contrary to the Enquiry findings. Notice is issued to him stating that, the Enquiry Officer has held him guilty of all charges. There is no discussion about the eight charges in the punishment order also.

9. Had if, the workman continued in service he would have superannuated in the year 2008. In my considered opinion this is a fit case to modify the punishment order in exercise of jurisdiction vested with this Tribunal by Sec 11 (A) of 'the Act'. Instead of removal from service compulsory retirement from service without imposing any penalty would serve complete justice in the matter.

AWARD

The reference is accepted.

The punishment order passed by the 2nd Party on 29.08.2005 is modified as below, the 1st Party shall be treated as compulsorily retired from service w.e.f 25.08.2005 without penalty. His terminal benefits shall be released in favour of his wife Smt. Sarvamangala.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 11th November, 2019)

JUSTICE Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2106.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक, दूरदर्शन केंद्र, मुंबई और अन्य एवं उनके कर्मचारी के प्रवंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय,-2 मुंबई के पंचाट (संदर्भ संख्या 53/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/11/2019 को प्राप्त हुए थे।

[सं. एल-42012/154/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2106.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 53/2015) of the Central Government Industrial Tribunal-cum-Labour Court-2 Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Doordarshan Kendra, Mumbai & Others, and their workmen which were received by the Central Government on 21.11.2019.

[No. L-42012/154/2015-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT :** M. V. Deshpande, Presiding Officer**REFERENCE NO.CGIT-2/53 of 2015****EMPLOYERS IN RELATION TO THE MANAGEMENT OF****(1) DOORDARSHAN KENDRA****(2) M/S. WELCARE SERVICES CO.**

The Director,
Doordarshan Kendra
P.B. Marg, Worli,
Mumbai – 400 030.

M/s. Welcare Services Co.,
2/127, Khimji Nagji Chawl,
S.B. Marg, Lower Parel,
Mumbai – 400 013.

AND**THEIR WORKMEN**

Shri Deepak Dattaram Rane,
Worli Police Camp, V.48/2,
Mumbai – 400 030.

APPEARANCES:

FOR THE EMPLOYER : Mr. H.D. Rathod, Advocate

FOR THE WORKMEN : Absent

Mumbai, dated the 04th October, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/154/2015 – IR (DU) dated 29.09.2015. The terms of reference given in the schedule are as follows :

“Whether the action of the management of M/s. Welcare Services Co. in terminating the services of Shri Deepak Dattaram Rane, Lift Operator cum pump operator w.e.f. 29.03.2014 and the demand of the workman for reinstatement in service with back wages and continuity of service by M/s. Doordarshan Kendra, Worli, Mumbai is just and legal ? If so, what relief the workman concerned is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices.

3. The concerned workmen filed statement of claim Ex.5. According to the concerned workmen he initially joined the services of the first party company in 1996 as Peon-cum-Helper. He was working under the control & supervision of Mr. V. Muppaudathi. He was paid voucher of Rs.67/- per day. He worked with the first party till 1999. In 1999 the first party brought the contractor under the name & style of M/s. Metro Engg. Co. He thereafter started receiving wages on behalf of the said company. However, his work was being supervised by the office of the first party company. He was working under the control & supervision of officers of the first party. The said arrangement was continued till 2008. Thereafter he was directed by the officers of Doordarshan Kendra to work as Lift Operator with another contractor by name & style of M/s. Welcare Services Co. He used to get wages from the said M/s. Welcare Services Co. but then the work was supervised by officers of Doordarshan Kendra. Thereafter from 2012 till April '13 the contractor by name & style of M/s. Akshata Enterprises was introduced. He continued to work as Lift Operator under the control & supervision of officers of Doordarshan Kendra.

4. According to the concerned workmen in the year 2012 – 13 he brought to the notice of officers of Doordarshan Kendra that he was not paid as per minimum wages. He therefore approached the office of RLC through his letter

dt. 1.1.14 and placed his grievance. RLC office made enquiry and thereafter from April '13 he started receiving wages as per minimum wage act. Since he filed the complaint before RLC office against the officers of Doordarshan Kendra, Doordarshan Kendra forced M/s. Welcare Services Co. to remove his services. Accordingly at the instance of first party his services came to be removed from 28.3.14 by leveling false charge against him.

5. It is thus case of the concerned workmen that he worked for more than 240 days. His termination from services is illegal. His termination has been effected without conducting any enquiry. He was doing the work of permanent nature. Hence his termination is liable to be set aside. He is therefore asking for declaration to the effect that his oral termination is illegal, bad in law. He is also asking for reinstatement in service with full back wages, continuity of service w.e.f. 28.3.14 till reinstatement.

6. First party company opposed the statement of claim by filing written statement Ex.6 contending therein that the second party workmen is casual, daily wager engaged by the contractor of Prasar Bharati. These labours are hired by the concerned contractors only for the period of his contract which is 12 months in this case. Contractor keeps necessary service record of his workmen and pays their wages. All the related orders and directions are given by the contractor directly to the workmen. Prasar Bharati does not have any control or so in all this. As such the Prasar Bharati has no nexus whatsoever with the contractors workmen and there is no employer employee relationship between them. Prasar Bharati only oversees that the alleged work is done properly as required. The contractors pay their workers as per the prevalent minimum wages. Contractors are paid by Prasar Bharati for the amount of work done as per terms of their contract which are rate contracts, periodic joint measurement of work done are done and recorded. On the basis of that payment is made to the contractors on submission of monthly running accounts bills. At the end of contract period a financial bill is prepared and paid.

7. According to the first party item rate contract to operate lift and water pump was awarded to the first party No.2 M/s. Welcare Services Co. from 1.5.13 to 30.4.14. The concerned workman was employed by first party No.2 contractor as casual labour on daily wages only for the period of contract. He is not the employee of first party No.1 or Doordarshan Kendra and has never been employed by the first party No.1 at any time. He was hired by M/s. Welcare Services Co. and the said company replaced him as per terms & conditions of agreement on 28.3.14. Security officer of the first party inspected the lift machine room during one of his routine rounds. He found that the concerned workman has illegally installed a computer and established an internet connection in lift machine room. He caught the workman using it. So on the next day i.e. on 29.3.14 first party No.2 contractor replaced him by his another workman. It is thus denied by the first party that the concerned workman is their employee and that the first party has terminated his services. It has thus sought the dismissal of reference.

8. Following issues are framed at Ex.9. I reproduce the issues along with my findings thereon for the reasons to follow:

Sl. No.	Issues	Findings
1	Whether the 2 nd party workman proves that he is an employee of Doordarshan Kendra, Mumbai (1 st party No.1) and there is employer-employee relationship between them ?	No
2.	Whether Doordarshan Kendra, Mumbai (1 st party No.1) proves that M/s. Welcare Services Co., Mumbai (1 st party No.2) was engaged by it as a contractor, and 2 nd party workman was an employee of the said contractor and not of Doordarshan?	Yes
3.	Whether the services of the 2 nd party workman have been illegally terminated on 29.3.14 ?	No
4.	Whether the 2 nd party workman is entitled to be reinstated in service with full back wages and continuity of service ? If yes, from which date ?	No
5.	Whether the 2 nd party workman is entitled to any relief ?	As per final order
6.	What Order ?	As per final order

Reasons

Issue No.1 to 4:-

9. At the outset it may be stated that the concerned workman remained absent. He has not adduced evidence to substantiate his claim. On the contrary first party management has adduced the evidence of Mr. Rajesh Pawar who is working as Administrative Officer in Prasar Bharati, Doordarshan Kendra, Mumbai. His evidence has gone unchallenged as there is no cross examination directed against him.

10. So far documents are concerned, we have document to show that first party No.1 awarded contract to first party No.2. It is the certified copy of work order dt. 12.7.13 issued by first party No.1 awarding contract to first party No.2. It

appears therefore that first party No.1 has given contract to the contractor to operate lift & water pumps at his Doordarshan Kendra, Mumbai premises for the period from 1.5.13 to 30.4.14.

11. That apart document at Sr. No.2, page 3 to 12 are the certified true copies of some of the bills raised by the contractors and paid by first party No.1. That would show that the first party engaged the contractors for providing services who are having requisite licences from competent labour authority under Contract Labour [Regulation & Abolition] Act, 1970 and who are having registration certificates under the EPF Scheme & ESI scheme. Obviously therefore the workmen who are employed by the contractors are the employees of the contractors and first party No.1 has no nexus with the contractors workmen. It will have to be said therefore that there is no employer employee relationship between the contractor's workmen and first party No.1 Doordarshan Kendra.

12. Even in his statement of claim the concerned workman has clearly stated that he was receiving the wages from the contractors and the said arrangement was continued even the contractors are changed. There is no evidence on record to show that the officers of the first party were supervising his work. In the absence of evidence to the effect that the contracts in between first party and the contractors is sham & bogus, it cannot be said that these contracts are not genuine. Even there is no allegations from the workman to that effect either before conciliation officers or in the statement of claim. The issue of sham & bogus contract is not issue referred by the Govt. for adjudication. If the contract between principal employer and the contractors are genuine then reliefs claimed by the workman do not lie against principal employer. Whatever stated in the statement of claim is that the services of the concerned workman came to be terminated by the contractors at the instance of first party only because he filed complaint before RLC for getting minimum wages. As seen there is no evidence in this respect also. But then the fact remains that his services came to be terminated by the contractor being the employer. He is the employee of the contractor, if it is so the relief against the termination should be against contractor. So far first party No.1 is concerned, the claim of the concerned workman against his termination is not sustainable since he is not the employee of the first party No.1 Doordarshan Kendra.

13. I say so because Broadcasting Corporation of India is a statutory Corporation owned by the Central Govt. It is governed by the rules framed by the Central Govt. All the employees of Doordarshan Kendra and Akashwani recruited prior to 2007 as regular employees were Central Govt. employees on deputation of Prasar Bharati. They are recruited on regular basis as per the recruitment procedure i.e. through Staff Selection Commission which is Central Govt. body like UPSC. There is well defined procedure for recruitment which involves formal application, interview, trade test, medical examination, police verification etc. This is the standard procedure for recruitment of the staff in Central Govt. departments. Concerned workman has not been appointed by following the standard procedure. From the record, it is clear that he is the employee of the contractor. There is no employer employee relationship between him and first party No.1. He was engaged by M/s. Welcare Services Co., first party No.2 as an employee of the contractor. He therefore cannot claim reinstatement of service with first party No.1. Hence the above issues are therefore answered accordingly as indicated against each of them in terms of above observations.

Issue No.5 & 6 :-

14. In view of my finding to the above issues, the workman is not entitled to any relief. Hence order.

ORDER

Reference is rejected with no order as to costs.

Date: 04.10.2019

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2107.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य कार्यकारी निदेशक, बीईएल ऑप्टोनिक डिवाइसेस लिमिटेड, पुणे मुंबई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, - 2 मुंबई के पंचाट (संदर्भ संख्या. 93/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 19/11/2019 को प्राप्त हुए थे।

[सं. एल-42011/74/2014-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2107.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 93/2014) of the Central Government Industrial Tribunal-cum-Labour Court-2 Mumbai , as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Executive Director,BEL Optronic Devices Ltd, PUNE Mumbai & Others, and their workmen which were received by the Central Government on 19.11.2019.

[No. L-42011/74/2014-IR (DU)]

V. K. THAKUR , Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/93 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF BEL OPTRONIC DEVICES LTD.

The Chief Executive Director,
BEL Optronic Devices Ltd.,
EL-30 'J' Block, MIDC,
PUNE – 411 026.

AND

THEIR WORKMEN

The President,
BEL Optronic Devices Employees Union,
EL-30 'J' Block, MIDC,
PUNE – 411 026.

APPEARANCES:

FOR THE EMPLOYER : Mr. S.N. Desai, Advocate

FOR THE WORKMEN : Mr. Umesh Vishwad , Advocate

Mumbai, dated the 11th October, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42011/74/2014 – IR (DU) dated 30.09.2014. The terms of reference given in the schedule are as follows :

"Whether the action of the management of BEL Optronic Devices Ltd., Bhosari Pune by not paying the HRA to the workmen as per circular dated 07.01.2013 is illegal and justified ? If not, to what relief the workmen are entitled to ?"

2. After the receipt of the reference, both the parties were served with the notices.
3. General Secretary of the Union Mr. Arjun Chavan has filed pursis Ex.26 mentioning therein that he wants to withdraw the reference.
4. Second party union thus wants to withdraw the reference. Hence the reference is withdrawn and disposed of with no order as to costs. Hence Order.

ORDER

Reference is withdrawn and disposed of with no order as to costs.

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2108. —ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स पेस पॉवर सिस्टम प्रा. लिमिटेड, धनबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, - धनबाद के पंचाट (संदर्भ संख्या 97/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 25/10/2019 को प्राप्त हुए थे

[सं. एल-42011/82/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2108.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 97/2014) of the Central Government Industrial Tribunal-cum-Labour Court- Dhanbad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Pace Power System Pvt. Ltd, Dhanbad & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42011/82/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 97/2014

Employer in relation to the management of Pace Power System Pvt. Ltd.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers :- Sri Rahul Kumar, Adv

For the workman. :- None

State : Jharkhand.

Industry:-Telecom

Dated 25.10.2019

AWARD

By Order No.L-42011/82/2014 (IR(DU)) dated 09/10/2014 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management not to fix duty of guard/care taker for 08 hours instead of 24 hours responsibility posted at Mobile Tower is proper, fair and justified. If not so, what relief management can provide to their guards/care taker, posted at Mobile Towers.”

2. After receipt of the reference, both parties were noticed and workman did not appear before the Tribunal. Thereafter again regd. notices were issued to the workman but even then no one appeared on behalf of the workman. Case is pending since 27/11/2014 and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ 2109.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अपर महाप्रबंधक, भेल, रानीपेट, तमिलनाडु और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुवंश में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, - चेन्नई पंचाट (संदर्भ संख्या. 91/2015) प्रकाशित करती है जो केन्द्रीय सरकार को 21/11/2019 को प्राप्त हुए थे।

[सं. एल-42011/43/2015 आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2109.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 91/2015) of the Central Government Industrial Tribunal-cum-Labour Court- Chennai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Additional General Manager, BHEL, Ranipet, TamilNadu & Others, and their workmen which were received by the Central Government on 21.11.2019.

[No. L-42011/43/2015- IR (DU)]

V. K.THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT

CHENNAI

Present : DIPTI MOHAPATRA, LL.M.

Presiding Officer

I.D. No. 91/2015

November 11th 2019

The General Secretary

BAP Mazdoor Sangam (BMS)

Regn. No. 580/NAT

BHEL/Ranipet

Pin Code-632406 : 1st Party/Petitioner

AND

1.The Additional General Manager : 2nd Party/1st Respondent
BHEL
Ranipet-632406
Tamil Nadu

2.The Corporate Office : 2nd Party/2nd Respondent
BHEL House, Siri Fort
New Delhi-110049

Appearance

For the 1st Party/Petitioner : Advocate, Sri B. Rajagopal
 For the 2nd Party/Respondents : Advocates, M/s T.S. Gopalan & Co.

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/43/2015-IR(DU) dtd. 10.06.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of BHEL Ranipet regarding not extending of arrears arising out of the enhanced consolidated wage of Rs. 11,000/- to the workers recruited against the same employment notice and joined before 01.01.2009 is justifiable or not? If not, to what relief the workers are entitled to?”

2. For a just adjudication a little reference to the backdrop of the case needs mention that on receipt of the above reference from the appropriate Government, the same is registered as ID No. 91/2015. The First Party, BAP Mazdoor Sangam is one of the affiliated Union to the Bharatiya Mazdoor Sangam and the All India Federation, raised the dispute against the First Respondent, the Additional General Manager/HR, BHEL, Ranipet demanding payment of revised enhanced consolidated wages to those employees who have been selected through a common advertisement and joined the Respondent before 31.12.2008. During the course the BHEL, Corporate Office was impleaded as Second Respondent vide order dtd. 07.02.2017 in IA 304/2016 arising out of the instant ID case 91/2015.

3. Both the Respondents entered appearance and filed their respective Counter Statements. The pleadings of both the Respondents are almost same and common. It is contended that the Petitioner Union does not command sufficient merit to raise the issue. The locus-standi of the representative character of the Petitioner’s Union, its authority and competence are questioned.

4. Both parties in addition to their pleadings adduced oral as well as documentary evidence. One D. Venkatachalam, the General Secretary of the BAP Mazdoor Sangam, Ranipet testified as WW1 and Exhibited 8 documents as Ext.W1 to Ext.W8. Both the Respondents similarly adduced oral evidence through their respective witnesses viz. Joy Alexander, the Additional General Manager/HR, BHEL/BAP, Ranipet and Samir Mukherjee, the Additional General Manager, HR-JR and Policy Matters, Chennai. A bunch of documents are marked through the above witnesses as Ext.M1 to Ext.M24.

5. In view of the pleadings of the parties, the evidence adduced by the witnesses and the materials borne out from the documents relied on so also the argument and counter argument advanced by the respective parties, the following issues are found to be emerged in :

- (i) If there exist any Employer-Employee relationship in between the Petitioners and the Respondents
- (ii) If the Respondent’s circular no. 021/IRX/2013 dtd. 04.10.2013 splitted the batch of employees in two groups though recruited under a common Employment Notice No. 1/2007 and thereby prevented one of such group who joined before 01.01.2009 to receive the enhanced consolidated wage and wage arrears
- (iii) If such action of the Respondent Management is justified and proper and
- (iv) If so to what relief?

Admittedly, there exists no dispute regarding Employer-Employees relationship between the Respondent Management and the members of the First Party Union. Thus, this issue is answered accordingly. Since rest of the issues are interlinked, inter-alia taken up together for a convenient discussion.

6. Undoubtedly, the Second Respondent is a Government Undertaking Sector and a manufacturer of major integrated power plant equipment having 17 manufacturing units across the country. The Ranipet unit is one among it. It is also an undisputed admitted fact that in order to settle the wage revision or any policy decision with regard to the benefits of the employees the matters in issue are taken up to the Forum of “Joint Committee of BHEL” wherein the Authorized Representatives of the Unions of all units and on behalf of the Respondent-Management, the responsible Competent Officers of Director and Functional Directors are the members of the Joint Committee. Any consensus arises out of it, it is sent to the Appropriate Authority for approval and the circular is issued following the approval. The relevant averments of the Counter Statements of First Respondent in Para-7 is referred. This averment stands undisputed since WW1 in Para-4 adduced evidence admitting the fact which finds corroboration from the witness who is examined on behalf of the Respondent as MW1 categorically narrates in Para-5 regarding the function of the Joint Committee. The admitted facts relating to the issues are concerned may be discussed at the point of need during the course of discussion.

7. It is averred by the First Party in the Claim Petition that the Petitioner's Union is all along meant for their genuine activities for the betterment of workers. That consequent to the revision of wages for the workers of BHEL in view of Memorandum of Agreement dtd. 30.12.2009 (Ext.M21), the revision of wages was implemented to its eligible employees w.e.f. 01.01.2007. By virtue of the Wage Anomalies Committee meeting held on 17.03.2011 and the circular issued thereon dtd. 05.04.2011 (Ex.W1-Ext.M5), the wage of Temporary Employees Artisans was revised w.e.f. 01.01.2007. The said circular was partially modified vide another circular dtd. 12.11.2011 enabling all the temporary workers who joined the services under the Second Party on or after 01.01.2010 against the sanctioned vacancies shall be eligible for revised consolidated wage. Superseding the said circular, the Management issued another circular on dtd. 04.10.2013 (Ext.W3-Ext.M10). By virtue of this circular the employees who joined on or after 01.01.2009 are entitled to get the privilege to receive the enhanced wage of Rs. 11,000/- instead of Rs. 5,500/- whereas the employees who joined before 01.01.2009 even under one notification are deprived of such privilege. In this manner, an employee even joins earlier to 01.01.2009 by virtue of the same notification and accordingly becomes senior to the employee who joins later on or after 01.01.2009. But the peculiar circumstance by virtue of the circular the junior employee while enjoys the privilege of wage enhancement, the senior employee is deprived of the benefit. The circular is challenged as an outcome of non-application of mind and defeats the principles of natural justice.

8. The Petitioner Union accordingly claims for implementation of the revised consolidated wage to the Temporary Employees Artisans recruited as against the sanctioned vacancies w.e.f. 01.01.2007 and those who have been recruited and joined against the Employment Notice 1/2007 (Ext.W4) to be considered for the consolidated wage revision from the respective date of their joining. It further demands rectification of the anomaly in payment of PPP and SIP arising out of the wrong implementation of revision of consolidated wages for the Temporary Employees Artisans recruited against the sanctioned vacancies.

9. The First Respondent averred in its Counter Statement that it has 17 manufacturing units in the whole of the country including one at Tiruchirappalli and at Ranipet in the State of Tamil Nadu. It has also one subsidiary, six joint ventures and more than 150 project sites at various locations of the country. The Respondent's Company adopts the procedure of induction and career progression, trainings for the skilled workmen (Technical). Accordingly, the selected candidates for Temporary Employees Artisans are to undergo induction training for one year and after completion of the said period the candidate will be placed in the pay-scale of A.3. It is further pleaded that the Employment Notice stipulates a condition that the candidates who are recruited against the sanctioned vacancies will be in the first instance taken as Temporary Employees (Artisans) and will be paid daily wages as per the prescribed minimum wage of the respective State Governments for the first half of the temporary period and consolidated wages for the second half. On selection of candidates they are required to undergo various training including in allied trades. It is also stipulated that on successful completion of the period of training the candidates would be absorbed in the regular establishment as Artisan Grade-IV i.e. A.3 at the minimum of pay-scale with applicable allowances as per the prevailing rules of the Company. Such absorption in the regular establishment was to be based on the assessment of the Committee constituted for the purpose to review the performance/behaviour/suitability of the candidates undergone the training. Such assessment report boosts the continuation of the service of such candidates in the organization. Thus, none of the employees can claim that they are at par with the regular employees.

10. It is further averred that the major issues are settled holding bipartite discussion in Forum named i.e. "the Joint Committee for BHEL" wherein on behalf of the Management/Respondent the Chairman & Managing Director, Functional Directors and Heads of various Units/Divisions of BHEL participate in the matter of Joint Committee. Similarly, the Authorized Representatives of major All India Central Trade Union organizations are representing the respective workmen unions. The mutual consensus, if any arrived at with regard to any of the issues i.e. demands/claim of revision of wages, allowances or service conditions, etc. of the workmen unions are taken to the Apex level by way of a Memorandum of Agreement (MoA). Such MoA is referred to the Board for approval. Thereafter looking into the merit of MoA with or without modification, if required the Board sends the MoA to the Administrative Ministry i.e. Ministry of Heavy Industry and Public Enterprises for approval. Only after such approval of the Ministry, issues necessary circulars stipulating terms and conditions for the claims as applicable to the employees at all levels for a specific period. As such, the approved MoA with or without modification, is binding on all in consonance to the circular issued by the Corporate Office with elaborate methodology of procedure. As such, the Respondent unit cannot suo-moto fix the wages or salary to its workers on its own. It is further contended that so far the claim of the Petitioner Union for wage revision is concerned, the Respondent Management has no role to play. It also claims that the issue raised by the Petitioner Union is not a valid Industrial Dispute, hence the dispute referred for adjudication is not tenable in the eye of law.

11. The Second Respondent almost admitting the pleadings of the First Respondent emphatically pleads that when the subject to any condition or any issue stands settled once and for all cannot be re-opened for any earlier case or pushed back to any other date. Both the Respondents categorically raise that by virtue of a circular the demands of the many of the Unions, there was wage revision enhancing the consolidated wage to the employees who joined on 01.01.2007 or after against the sanctioned vacant post. The Special Session of the Joint Committee Meeting which was held on 30th and 31st August, 2013, a circular was issued granting enhanced consolidated amount to all temporary employees who had joined service on or after 01.01.2009. It is also pleaded that the said Minutes of the Joint Committee Meeting was

binding on the Petitioner's Union as the Apex Union was a party to such committee meeting and the First Party Union is an affiliated Union to it. Both the Respondents also averred that the demand of the petitioner regarding the extension of the enhanced wage revision of consolidated amount of Rs. 11,000/- to those temporary employees who joined on or after 01.01.2007 is to be countenanced as it would lead to an anomalous situation for those who joined in 2007-2008. By virtue of the circular those employees when are benefited to a higher salary of 2.5 increments in view of Memorandum of Agreement dtd. 30.12.2009 (Ext.M21), the claim and demand in the instant dispute by the First Party is not justified. Both the Respondents also highlighted the observation made by the Tribunal in ID 61/2014 wherein the Award against the Petitioner's claim taking into account, the benefit of 2.5 increments as already extended to the temporary employees who joined and covered by virtue of the Ext.M4 Circular 007/IRX/2010.

12. The First Party Union files rejoinder that their claim in ID 61/2014 is not the same or identical to the claim of the petitioners union in the instant case. It also rebutted the plea of the Respondent that in view of settlement dtd 30.12.2009 (Ext.M21), the Second Respondent agreed to extend 2.5 increment to all the workers as such it is not a special benefit or concession to the Temporary Employees recruited against the sanctioned vacancies. As such the payment or non-payment of 2.5 increments does not affect on the claim to get the consolidated amount for the period. The persons recruited in the month of Oct, Nov and Dec 2008 are not paid with the enhanced dues whereas the recruits from 01.01.2009 are getting the benefit. Thus the 1st decision of the Second Respondent to pay the consolidated pay to the recruits retrospectively from 17.03.2011 with effect from 17.3.2011 to 01.01.2010 and therefrom 01.01.2010 to 01.01.2009 are unilateral decision and unscientific. It also claims that such defective circular seriously affects the moral, social and financial status.

13. Without raising any dispute to the Respondent's averment with regard to the procedure of recruitment of the employees i.e. TEA, the WW1 adduces that the bipartite discussion with regard to any policy decisions such as wage revision, etc. are taken up in a Forum called as "Joint Committee". The Representatives of the Unions from all the units across the country and the Representative of the Management are the members of such Committee. It is added that the ITI Certificate Holders who had undergone one year Apprenticeship Training are to be recruited Temporary Employees Artisan(TEA) and after completion of one year they have been absorbed in regular establishment at regular time-scale. Earlier recruited TEAs were paid with a consolidated wage of Rs. 5,500/- and the revised wages for those regular workers of BHEL was to be paid with effect from 01.01.2007 and onwards. This settlement of wage revision vide MoA dtd. 30.12.2009 (Ext.M20) signed by the parties for the regular workers of BHEL who were working as Temporary Employees on 17.03.2011 as well as to those to be recruited in future and shall be paid with effect from the date of their joining of the service in the Respondent. The consolidated wage for TEA was initially revised from Rs. 5,500/- to Rs. 11,000/- vide Circular 011/IRX/2011 dtd. 05.04.2011 (Ext.W1). The said Circular (Ext.W1) was revised vide another Circular 018/IRX/2011 dtd. 12.07.2011 (Ext.W2) on the ground that the relevant date for applicability of Ext.W1 has led to splitting of same batch of Temporary Employees recruited against the sanctioned vacancies through a common advertisement, the Employment Notice i.e. 01/2007 (Ext.W4) thereby disturbs the equity in the matter of payment of uniform consolidated amount. This witness adds that as such by virtue of such revised circular, all the temporary workers who joined the service under the Respondent on or after 01.01.2014 against the sanctioned vacancies were eligible to the revised consolidated wages with effect from the date of their respective joining. The Circular under Ext.W2 was again partially modified vide circular no. 021/IRX/2013 dtd. 04.10.2013 (Ext.W3) enabling all temporary workers who had joined the service on or after 01.01.2009 against the sanctioned vacancies to get the privilege of getting revised consolidated amount with effect from their date of their joining. By virtue of the Employment Notice (Ext.W4) of the Respondent for recruitment of Skilled Artisan, TEAs were recruited following due selection process i.e. Written Test, Personal Interview, Medical Test, etc. The successful candidates were issued with the "Offer Letters of Appointment" inviting them to join the Respondent's Management. One of such successful candidate, Vijaya Kumar was issued with the offer letter vide Ext.W5 dated 20.11.2008 and joined on 04.12.2008 pursuant to the office order dtd. 10.12.2008. Similarly, one R. Mahesh Kannan issued with the offer of appointment dtd. 29.12.2008 vide Ext.W7. By virtue of the Office Order dtd. 16.01.2009 (Ext.W8) Sri R. Mahesh Kannan joined the establishment of the Respondent on 19.01.2009.

14. It is further adduced by the WW1 that by virtue of the implementation of the Circular (Ext.W3) dtd. 04.10.2013 Mahesh Kannan was paid with the revised enhanced consolidated wage of Rs. 11,000/- from the date of his joining i.e. 19.01.2009 whereas Sri Vijaya Kumar who was also recruited through the same selection procedure as per the same common advertisement dtd. 1/2007 vide Ext.W4 was not paid with the enhanced consolidated wages of Rs. 11,000/- as he joined prior to 01.01.2009 i.e. on 04.12.2008. WW1 highlights the illustration given in Para-4 of the Claim Statement regarding the quantum of loss arising out of the implementation of the circular dtd. 04.10.2013

(Ext.W3). The illustration was a comparison list of the wage received by Sri M. Vijaya Kumar and by Mahesh Kannan. It is calculated that each of the senior employees sustains financial loss of Rs. 72,900/- for the relevant period due to the anomaly of the circular.

15. As such the petitioner challenges the wage anomaly of the circular dtd. 12.07.2011 (Ext.W2). He advances that the circular defeats the very purpose of the recruitment as it permits an employee to draw more salary (revised) in favour of the Junior employee rather than a Senior employee who being recruited under the same selection procedure and joined earlier. This witness deposes that it is the demand on behalf of the Union that the anomaly of the circular to be rectified

enabling the eligible employees (TEA) to get the revised enhanced consolidated wages, who have been recruited by the common notification 1/2007 and joined duties before 31.12.2008.

16. MW1, the Additional General Manager/HR, BHEL/BAP, Ranipet in support of the Counter Statement adduces evidence regarding the procedures adopted for recruitment of employees of different cadres in Respondent's establishment. It is added that the recruited candidates after successful completion of their induction training are absorbed in the Organization. Such absorption in regular post in the establishment was based on the review of their performance, behaviour and suitability. MW1 in support of the relevant averments of the Counter Statement, adduces that the appropriate Ministry on the basis of the MoA, sent to it by the Board issues necessary circulars stipulating terms, conditions and the specific period which would bind the parties to the bipartite discussion in the Joint Committee Meeting. MW1 further adds that for a long period this system is going on in the Establishment. Few circulars are exhibited to convince its binding force for the stipulated period mentioned therein such as (i) the circular dated 10.08.1993 (Ext.M1) for 4 years from the date 01.09.1998 (ii) the circular dated 09.08.1995 (Ext.M2) is for the period of 4 years from 01.01.1992 to 31.12.1996 (iii) circular dated 15.11.2000 (Ext.M3) is for 10 years i.e. from 01.01.1997 to 31.12.2006 and (iv) the circular dated 06.02.2000 (Ext.M4) is for 7 years i.e. from 06.02.2000 to 01.01.2007. The term issued by way of circular constituted total package and there is no question of any employee/employees directly or indirectly accepting a portion and challenging the rest as not binding or seeking an interpretation other than the circular of the Management i.e. Ext.M4 dtd. 06.02.2010 wherein the pay-fixation is illustrated in respect of the employees regularized between 01.01.2007 and 31.12.2009. MW1 further stated that by virtue of the circular the eligible employees were receiving 2.5 additional increment and as such their wage comes to Rs. 877.5 each which is almost equivalent to the enhanced consolidated wage who joined subsequently. He denies the illustration given by the petitioner in Para-4 of the Claim Statement as contrary to the facts and hence baseless. On 17.03.2011, there was Anomaly Committee Meeting and the Wage for Unskilled and Semi-Skilled Workers and Skilled Workers were decided as Rs. 10,500/-, Rs. 10,750 and Rs. 11,000/- respectively. It is further added that this circular provides opportunity to the employees who joined against the sanctioned vacancies and working in different units of BHEL as on 17.03.2011 to get the above rate of consolidated wages from the date of their joining. The Minutes of Anomaly Committee Meetings was approved and circulated by the Corporate Office vide the Circular No. 011/IRX/2010 dtd. 05.04.2011 (Ext.M5). The representatives were given the inter-office memorandum no. AA/HR/362(XI) dtd. 31.05.2011 (Ext.M6). Pursuant to the circular (Ext.M5) the Corporate Office, New Delhi issued another circular vide no. 018/IRX/2011 dtd. 12.07.2011 (Ext.M7) regarding modification of the earlier circular on the eligibility of the payment of revised consolidated amount for all temporary workers who joined the service on or before 01.01.2010. In continuation to the first Anomaly Committee which was held on 05.10.2010, another meeting was convened to discuss the issues carried forward of the first meeting on 07.03.2011 at New Delhi and a circular thereto was issued vide no. AA/HR/IR/523 (AC) dtd. 03.02.2012 (Ext.M8). Even to consider the various issues concerning the workmen, a Special Session of Joint Committee was held on 30.08.2013 wherein the representatives of BMS were present. It is stated that the Petitioner Union was affiliated to BMS. In that meeting the Workers Union, the BMS made a strong demand for the payment of enhanced consolidated wage to the Temporary Employees who joined in service against the sanctioned vacancies on or after 01.01.2007. On much deliberation and discussions it was agreed to allow enhanced consolidated amount to those employees who joined as Temporary Employees on or after 01.01.2009 w.e.f. the respective date of their joining the services. It is further stated on behalf of the Respondent that since the issues are already settled, cannot be re-opened. The Corporate Office in this regard issued circular vide Ext.M9.

17. It is further stated by this witness that the Minutes of Joint Committee Meeting held on 30th and 31st August, 2013 are binding on the Petitioner Union as it is affiliated with the Apex Union which was a party to the Joint Committee. The circular issued on 04.10.2013 (Ext.M10-Ext.W3) stated the revised consolidated amount was extended to those who joined the service as Temporary Workmen on or after 01.01.2009. This witness also drew attention on the petition wherein the Industrial Dispute was raised by the Petitioner's Union before the ALC and the documents related to the proceeding before the ALC Central, Chennai marked under Ext.M11 to Ext.M19. It is further stated by this witness that an identical Industrial Dispute was raised by the Trichy Unit in ID 61/2014 before the Industrial Tribunal on such same plea of Workers Union. The Tribunal rejected the claim vide its Award dtd. 18.02.2016 (Ext.M20). Drawing attention on the aforesaid evidence of the witness, it is contended by the Learned Counsel for the Respondent that the very same issue was rejected by the Industrial Tribunal against the Trichy Unit and the said Award is binding on other units i.e. Ranipet Unit. It is emphasized by the Learned Counsel that in view of the Award in ID 61/2014, the Petitioner Union has no basis to claim.

18. The MW2, one Samir Mukherjee, the Additional General Manager, Incharge of HR-IR and Policy Matters deposed that he participated in the discussion which was proceeded in MoU dtd. 30.12.2009 (Ext.M21). During the course when the MoU was signed the period of temporary employment was reduced from 2.5 years to 1 year and even in the one year, the first six months was taken to be on daily rated wages and the next six months was taken on consolidated wages of Rs. 5,500/- He also emphasizes regarding the Anomaly Committee Meeting held on 17.03.2011 in which the issue of revising daily rated wages and payable to temporary employees were discussed. It was decided that the temporary service of one year and during the entire period the employees would be paid consolidated wages in skilled category of Rs. 11,000/-. As such, the terms and conditions of the earlier circular for payment of daily rated wages for first six months and for payment of consolidated wages for the rest six months was suppressed. The circular dtd. 05.04.2011 (Ext.M5) was given effect from 17.03.2011. Basing on the representation of the employees who were

recruited as temporary employees against sanctioned vacancies in the year 2010 and were working alongwith the workers who were in service from 07.03.2011 to consider them to get the benefit. As such, another circular dtd. 12.07.2011 was issued extending the revised rate of consolidated wages to all the temporary workers who were recruited on or after 01.01.2010. Again there was a further demand made that the revised wages of Rs. 11,000/- to temporary employees should be given to all those who joined on or after 2007 was not accepted but it was agreed to extend the benefits to those who joined on or after 01.01.2009. It is further stated by him that the temporary employees who were recruited between 01.01.2007 to 31.12.2008 were made permanent by September, October and November, 2008 and 2009 and thereby they came under the purview of the MoU dtd. 30.12.2009 giving a substantial increase in their wages and therefore they were not given the benefit of revised rate of wages i.e. Rs. 11,000/- for their period of service as temporary employees. He produces the deposition of two witnesses viz. G. Sankar and V. Venkataswamy recorded in ID 61/2014. It is submitted by the Learned Counsel that when all the financial benefits have been extended to the employees recruited in between 01.01.2007 and 31.12.2008 and made permanent, cannot ask for further financial benefit as claimed by the First Party Union.

19. The Learned Counsels for both parties advanced their arguments in support of their respective pleadings in Claim Statement as well as Counter Statement. At the cost of repetition it needs mention that the Petitioner's Union in addition to their claim involved in the reference, sought for the relief which finds place in Para-VII (1) of its Claim Statement for the implementation of revision of the consolidated wages which are being paid to such of those Temporary Employees Artisans recruited against sanctioned vacancies from 01.01.2007. The further claim of the Union in the same Para Clause-(2) for the rectification of the anomaly in payment of PPP and SIP arising out of wrong implementation of revision of consolidated wages for the Temporary Employees Artisans recruited against sanctioned vacancies. At the outset, it is worthwhile to mention that so far the jurisdiction of the Industrial Tribunal is concerned it cannot go beyond the reference of the Appropriate Government for adjudication within the purview of Industrial Dispute Act. The adjudication accordingly is restricted to the reference only. Thus, the demand prayed by the First Party Union Para-VII (1) & (2), except the claim for extension of revised wage of Rs. 11,000/- to the TEAs recruited under the common Employment Notice 1/2007, are not subject matter for adjudication in the instant ID case. Accordingly, the Claim Statement in this regard and the Counter Statement filed by the Respondents are not discussed as not relevant to the instant ID.

20. Thus, the crux of the dispute in reference is if the circular 021/IRX/2013 dtd. 04.10.2013 (Ext.W3) while extended the enhanced consolidated wages of Rs. 11,000/- to a group of employees who joined on or after 01.01.2009 at the same time prohibits the employees to enjoy the benefits of the enhanced wage revision who joined before 01.01.2009 though both the groups vide a common notification 1/2007 (Ext.W4) were recruited through a definite selection procedure and joined the Respondent's establishment in accordance to the Respondent's Office Order. It is to be seen if the action of the Respondent by not extending enhanced consolidated wages and the wage arrears to the employees joined after 01.01.2009 on the basis of the circular (Ext.W3) would amount to unfair labour practice? At the cost of repetition, the evidence adduced by WW1, D. Venkatachalam is taken into account. His evidence in Chief in Para-9 discloses that the employment notice no. 1/2007 (Ext.W4), the Second Respondent advertised for the recruitment of the Skilled Artisans (TEA) at BAP/BHEL/Ranipet. Accordingly, the Applicants being recruited following due selection procedure such as the Written Test, Personal Interview and also the required medical examinations, issued with offer letters of appointment, and joined the Respondent as per the date fixed by the Respondent in the respective Office Orders of the Respondent. WW1 in the same Para-9 of his evidence in Chief gives example of two such successful candidates, such as Vijaya Kumar vide Roll No. 11150 and Mahesh Kannan vide Roll No. 11302. Vijaya Kumar was issued with offer letter of appointment and Office Order to join the Respondent vide Ext.W5 and Ext.W6. Similarly, Mahesh Kannan was issued with the offer letter of appointment and Office Order vide Ext.W7 and Ext.W8. On a meticulous perusal of the exhibits, it reveals that the date of joining of these candidates were fixed by the Respondent. Accordingly, when Vijaya Kumar joined Respondent on dated 04.12.2008 and Mahesh Kannan joined the Respondent's Office on 16.01.2009. Both of them were also allotted with the Staff Code Nos. This part of his evidence stands undisputed, not being challenged by the Respondents.

21. At the outset it is argued on behalf of the Petitioner's Union that when the Respondent extends the enhanced consolidated wage of Rs. 11,000/- to Mahesh Kannan but such privilege is not extended to Vijaya Kumar solely on the point that he joined prior to 01.01.2009. It is further urged by the Authorized Representative of the Petitioner's Union that not only Vijaya Kumar but the employees who else under the same Employment Notice, 1/2007 (Ext.W4) joined the Respondent before 01.01.2009 are not extended with the benefit of enhanced consolidated wage and thereby sustain heavy financial loss. It is also highlighted by drawing attention on the comparison statement at Para-4 of Page-4. the comparison statement reveals that the recruits who joined before 01.01.2009 though are senior to the recruits joined after 01.01.2009 sustain financial loss of Rs. 72,900/- (each of them) for the relevant period. The Learned Counsel also focuses on the MoA dtd. 30.12.2009 (Ext.M21). On perusal of Ext.M21, it is found that the previous wage agreement which was effective from 01.01.1997 expired on 31.12.2006 which occasioned to have MoA (Ext.M21). The negotiations on the demands of the Unions commenced from the fourth meeting of the Joint Committee held on 21.01.2009. Since then a series of meeting of Joint Committee were held. After detailed and protracted discussions in as

much as in nine meetings resulted in the agreement Ex.M21 dated 30.12.2009 in the Joint Committee Meeting held at Delhi. The revised wage was implemented and arrears paid to the regular employees. Thereafter a Wage Anomaly Committee Meeting held on 17.03.2011 and a circular was issued thereto on 05.04.2011 (vide Ext.W1 and Ext.M5). It reveals from the circular that the existing policy was dispensed with and uniform consolidated amount was decided to be paid throughout the period of temporary service of one year to the workers recruited against the sanctioned vacancies. The revised wages accordingly decided for Unskilled as Rs. 10,500/-, Semi-Skilled Rs. 10,750/- and Skilled Rs. 11,000/. It was also settled that all workers recruited against the sanctioned vacancies who were working as Temporary Employees on 17.03.2011 as well as those to be recruited in future shall be covered under the revised policy. However, this circular was modified vide another circular (Ext.W2) dtd. 12.07.2011. The partial modification to the Ext.W1 dtd. 05.04.2011 was made in Para-3 (a) that all temporary workers who joined the services of the Company on or after 01.01.2010 against sanctioned vacancies shall be eligible for payment of revised consolidated amount with effect from their date of joining in the Company. The said circular under Ext.W2 was again modified vide circular Ext.W3 which reveals that by virtue of the Special Session of the Joint Committee and pursuant to the discussion in partial modification of Ext.W2 it was decided that all temporary workers who joined the services of the Company on or after 01.01.2009 against sanctioned vacancies shall be eligible for payment of revised consolidated amount with effect from their date of joining of their services.

22. On a meticulous perusal and careful scrutiny on the documents discussed above, undoubtedly shows that issuance of several modified circulars and in particular (Ext.W3) by extending benefits to the employees for the retrospective periods as mentioned therein found to be an outcome of unfair labour practice on the part of the Respondent as by virtue of such circular (Ext.W3), it debars equal pay to the employees holding the equal status though employed vide a common Employment Notice under 1/2007 (Ext.W4). It is to be seen if the concerned employees workmen of the First Party Union were the victims of such unfair labour practice in the hands of the Respondent Management and thus entitled to the relief sought for. The unfair labour practice as defined under Section-2(ra) of the ID Act means any practice specified in the Vth Schedule of ID Act. The terms Unfair Labour Practice is a comprehensive one and would appear even to include victimization in its scope. Even though it has received no statutory definition, the term has received judicial attention and interpretation. Its connotation is by no means uncertain, indefinite or vague. It is however neither desirable nor possible to lay down the limits of “Unfair Labour Practices” in the Fast Developing Course of Industrial Law. Broadly speaking Unfair Labour Practice is committed by an Employer when he does or omits to do something which act or omission is invasion of the legitimate rights or interests of the workmen. Reliance is placed in case of **Assam Railway and Trading Company Ltd. Vs. S.K. Sen, 1973 Lab IC 1650 (1652), Calcutta Division Bench.**

23. Here in the instant case it reveals, the issuance of circular (Ext.W3) debarring one group of the splitted batch of employees from availing the financial benefits with regard to the wage revision, amounts to Unfair Labour Practice on the part of the Respondent as the other group of the same splitted batch of employees are privileged of such financial benefit. Without any reasonable cause, such discrepancy in the availing financial benefit occurred due to a rider fixed in the circular is the date of joining. It is still not understood how such a grave and serious anomaly was allowed to creep in the circular issued by the Corporate Office. Besides, the first circular which was issued by the Corporate Office vide Ext.W1 basing on the MoA dt. 30.12.2009 (Ext.M21) when was modified time and again vide circular 018/IRX/2011 dtd. 12.03.2011 (Ext.W2) and circular 021/IRX/2013 dtd. 04.10.2013 (Ext.W3), the reason best known to the Competent Authority as to why such anomaly which crept in Ext.W3 was not rectified. The issuance of such circular defeats the principles of natural justice. Equal pay for equal work is the rule. The very act of the issuance of the circular though does not attract the word “victimization” in strict sense in respect of the First Party Petitioners, the circular (Ext.W3) splitting the batch and by not extending the revised enhanced consolidated wages of Rs 11,000/- without any reasoned ground impliedly speaks about their victimization due to Unfair Labour Practice of the Respondent.

24. In view of the discussions held in preceding paragraphs, the claim of the First Party petitioners, for extension of enhanced consolidated wages and wage arrears, to the TEA, recruited in a common Employment Notice I/2007, joined before 01.01.2009 has got every merit as established on the evidence on record. The First Party Union accordingly is entitled to the relief sought for in consonance to the reference. Before parting with the order, it is felt to issue direction to the Second Respondent to take necessary steps for identification of the beneficiaries (members of the First Party Union) who by virtue of the common Employment Notice 1/2007 joined Respondent's establishment before 01.01.2009 for implementation of the enhanced wage revision.

Hence ordered.

The Second Respondent is hereby directed to take necessary steps for rectification of the anomaly crept in the circular 021/IRX/2013 dtd. 04.10.2013 by extending the enhanced consolidated wages of Rs. 11,000/- to the identified beneficiaries who were recruited under the common Employment Notice

1/2007 and joined before 01.01.2009. The Respondent Management is further directed to disburse the wage arrears and all consequential allowances/financial benefits applicable to them with effect from their respective date of joining within a period of three months from the date when the Award is executable. The First Respondent is directed to coordinate with the Second Respondent in this regard.

The reference is answered accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated to the P.A., transcribed and typed
by him, corrected and pronounced by me
in the open court on this day the
11th November, 2019)

Witnesses Examined

For the 1st Party/Petitioner : WW1, Sri D. Venkatachalam

For the 2nd Party/Management : MW1, Sri Joy Alexander

MW2, Sri Samir Mukherjee

Documents Marked

On the Petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Circular No. 011/IRX/2011 dtd. 05.04.2011
Ext.W2	-	Circular No. 018/IRX/2011 dtd. 12.07.2011
Ext.W3	-	Circular No. 021/IRX/2013 dtd. 04.10.2013
Ext.W4	-	Employment Notice No. 1/2007
Ext.W5	-	Offer of Appointment – Shri Vijayakumar M. Dt. 20.11.2008
Ext.W6	-	Office Order No. Joining dt. 10.12.2008
Ext.W7	-	Offer of Appointment – Shri Mahesh Kannan.R Dtd. 29.12.2008
Ext.W8	-	Office Order for Joining dtd. 19.01.2009

On the Management's side

Ex.No.	Date	Description
Ext.M1	10.08.1983	Corporate Personnel Circular No. 05/1983 issued by the BHEL, New Delhi
Ext.M2	19.08.1995	Corporate Personnel Circular No. 22 of 1995 issued by BHEL, New Delhi
Ext.M3	15.11.2000	Corporate Personnel Circular No. 045/IRX/2000 issued by New Delhi
Ext.M4	06.02.2010	Corporate Human Resource Circular No. 007/IRX/2010 issued by BHEL, New Delhi

Ext.M5	05.04.2011	Corporate Human Resource Circular No. 011/IRX/2010 issued by BHEL, New Delhi
Ext.M6	31.05.2011	Circular on reconstitution of Joint Committee for BHEL
Ext.M7	12.07.2011	Corporate Human Resource Circular No. 018/IRX/2011 issued by BHEL, New Delhi
Ext.M8	03.02.2012	Minutes of the 2 nd meeting of the Anomalies Committee at New Delhi
Ext.M9	24.09.2013	Minutes of the Special Session of the Joint Committee for BHEL (issued by the BHEL, New Delhi)
Ext.M10	04.10.2013	Corporate Human Resources Circular No. 021/IRX/2013
Ext.M11	26.02.2014	Claim Statement filed by the Petitioner before Asstt. Labour Commissioner (C), Chennai
Ext.M12	29.04.2014	Letter of the Respondent to ALC
Ext.M13	21.08.2014	Letter of Petitioner to ALC
Ext.M14	08.08.2013	Claim filed under ID Act by BMS Union, Trichy before ALC (C), Puducherry
Ext.M15	26.09.2013	Reply of BHEL to AC (C), Puducherry
Ext.M16	14.12.2013	Reply of BHEL to ACL (C), Puducherry
Ext.M17	12.02.2014	Reply of BMS Union, Trichy to ALC (C), Puducherry
Ext.M18	29.04.2014	Conciliation failure report of ALC (Central)
Ext.M19	07.07.2014	Letter of BHEL
Ext.M20	-	Award in ID No. 61/2014
Ext.M21	30.12.2009	Memorandum of Agreement BHEL, New Delhi
Ext.M22	06.02.2010	Corporate Human Resource Circular
Ext.M23	-	Deposition of Mr. G. Sankar – WW1 in ID 61/2014
Ext.M24	-	Deposition of Mr. V. Vengadesan – WW2 in ID 61/20014

नई दिल्ली, 28 नवम्बर, 2019

का. आ. 2110.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक राजस्थान एटोमिक पॉवर स्टेशन, कोटा राजस्थान और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, - जयपुर पंचाट (संदर्भ संख्या 84/2006) प्रकाशित करती है जो केन्द्रीय सरकार को 05.11.2019 को प्राप्त हुए थे।

[सं.एल-42011/46/2006-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2110.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2006) of the Central Government Industrial Tribunal-cum-Labour Court- Jaipur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Rajasthan Atomic Power Station , Kota, Rajasthan & Others, and their workmen which were received by the Central Government on 05.11.2019.

[No. L-42011/46/2006- IR(DU)]

V. K. THAKUR, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 84 / 2006

राधामोहन चतुर्वेदी

पीठासीन अधिकारी

रेफरेन्स नं. L-42011/46/2006-IR(DU) दिनांक 15/11/2006

श्री प्रेमाराम, पुत्र स्वर्गीय श्री देवीलाल, जाति भाण्ड, आयु 41 वर्ष, कार्यदक्ष—“सी”,
यूनिट I व I न्यूकिलियर ट्रेनिंग सेंटर अणुशक्ति, रावतभाटा, वाया—कोटा, जिला—चित्तोडगढ़।

बनाम

स्थल निदेशक राजस्थान एटोमिक पॉवर स्टेशन यूनिट 1 से 6, अणुशक्ति, रावतभाटा—कोटा राजस्थान

प्रार्थी की तरफ से : कोई नहीं
अप्रार्थी की तरफ से : श्री धर्मेन्द्र जैन—एडवोकेट

: अधिनिर्णय :

दिनांक : 9. 10. 2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 15.11.2006 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगामी चरणों में अधिनियम कहा जावेगा) की धारा 10 (2A) व (1) (d) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित विवाद इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित किया गया :—

“Whether the demand of the Rajasthan Anushakti Pariyojna Karamchari Sangh for seeking benefit of service rendered by Shri Prema Ram, TM-B, from 02-09-92 to 01-06-97 in fire Section for the purpose of promotion, is legal and justified? If yes, to what relief the workmen is entitled to.”

2. उपयुक्त संदर्भित विवाद प्राप्त होने पर उभयपक्ष को सूचना पत्र जारी कर आहूत किया गया। प्रार्थी की ओर से उसके प्रतिनिधि उपस्थित हुए और दावे का अभिकथन प्रस्तुत किया। प्रार्थी का कथन है कि प्रेमाराम कार्यदक्ष “सी” एन.टी.सी. अनुभाग

राजस्थान परमाणु बिजलीघर यूनिट 1 व 2 में कार्यरत था जिसे पदोन्नति हेतु पिछली सेवा का लाभ न देने के सम्बन्ध में विवाद सहायक श्रम आयुक्त केन्द्रीय कोटा के समक्ष उठाया गया लेकिन उसमें कोई समझौता नहीं हो सका। प्रेमाराम कार्यदक्ष जिसे आगे प्रार्थी कहा जायगा को कार्यदक्ष बी के पद पर फायर अनुभाग में की गई विगत सेवा का लाभ दिनांक 1.5.98 से दिया जाना था। लेकिन उसे 1.11.2000 से पदोन्नति दी गई। पदोन्नति में फायर सर्विस की 4 वर्ष 2 माह की सेवा अवधि को शामिल नहीं किया गया इस कारण प्रार्थी को आर्थिक हानि उठानी पड़ रही है। प्रार्थी को संशोधित वेतनमान में स्थित वेतन स्थिरिकरण का लाभ भी नहीं दिया गया। दिनांक 1.5.98 से प्रार्थी को वेतन श्रृंखला रूपये 3200—4900 के ग्रेड में पदोन्नत किया जाना चाहिये था। तत्पश्चात् 3 वर्ष बाद कार्यदक्ष “सी” और उसके 3 वर्ष बाद दिनांक 1.5.2004 से कार्यदक्ष “डी” वेतन श्रृंखला रूपये 4500—7000 में पदोन्नति की जानी थी। अतः प्रार्थी के पक्ष में आदेश जारी करने हेतु प्रबन्धन को आदेश जारी किया जावें।

3. विपक्षी ने प्रतिउत्तर में प्रारम्भिक आपत्तियां प्रस्तुत कीं, और कहा कि न्यूकलियर पॉवर कार्पोरेशन ऑफ इण्डिया लिमिटेड में तकनीकी प्रवर्ग के कर्मचारियों की पदोन्नति हेतु नोम्स अपनाये गये हैं जिसे मैरिट प्रमोशन स्कीम कहा जाता है। इन नोम्स के अन्तर्गत पूर्व में की गई सेवा की गणना किये जाने का कोई प्रावधान नहीं है। प्रार्थी ने यह स्पष्ट नहीं बताया है कि किस नियम का उल्लंघन अप्रार्थी द्वारा किया गया है। अन्य कर्मचारियों का मामला प्रार्थी से भिन्न है। प्रार्थी को समय—समय पर विहित नियमों के अन्तर्गत पदोन्नति दी गई है। प्रार्थी का दावा किसी न्यायसंगत या विधि संगत आधार पर प्रस्तुत नहीं है। अतः दावा निरस्त किया जावें।

4. उभयपक्ष के अभिवचनों के उपरान्त दिनांक 6.1.16 को प्रार्थी की और से रमेश कुमार गोतम महामन्त्री कर्मचारी संघ का शपथ पत्र साक्ष्य में प्रस्तुत हुआ। किन्तु प्रार्थी पक्ष ने इस साक्षी को विपक्षी द्वारा की जाने वाली प्रतिपरीक्षा हेतु दिनांक 11.9.2019 तक भी प्रस्तुत नहीं किया। इस दौरान प्रार्थी पक्ष को चेतावनी सहित 2 बार अन्तिम अवसर भी प्रदान किया गये। लेकिन कोई परिणाम नहीं निकला। अन्ततः दिनांक 11.9.2019 को प्रार्थी की साक्ष्य का अवसर समाप्त करते हुए विपक्षी को साक्ष्य हेतु निर्देश दिये गये। किन्तु विपक्षी ने भी इस स्थिति में कोई साक्ष्य प्रस्तुत नहीं करना चाहा।

5. इस प्रकरण में प्रार्थी ने यद्यपि साक्ष्य हेतु रमेश कुमार गोतम का शपथ पत्र प्रस्तुत किया है किन्तु स्वयं को प्रतिपरीक्षा हेतु 3 वर्ष 6 माह की अवधि तक प्रस्तुत नहीं किया, इसलिये प्रार्थी की मुख्य परीक्षा का शपथ पत्र प्रतिपरीक्षा के अभाव में साक्ष्य के रूप में ग्रहण किये जाने योग्य नहीं है। साक्ष्य के अभाव में प्रार्थी पक्ष दावे के अभिकथन में वर्णित तथ्यों और मांगे गये अनुतोष की देयता प्रमाणित नहीं कर सका है।

6. प्रार्थी के साक्ष्य के अभाव में राजस्थान अणुशक्ति परियोजना कर्मचारी संघ, द्वारा प्रेमाराम ट्रेडसमैन “बी” की दिनांक 2.9.92 से 1.6.97 तक फायर अनुभाग में दी गई विगत सेवा को पदोन्नति दिये जाने हेतु संगणित करने हेतु की गई मांग विधिपूर्ण एवं न्यायोचित प्रमाणित नहीं हुई है। अतः प्रार्थी, साक्ष्य के अभाव में कोई अनुतोष पाने का अधिकारी नहीं है।

7. अधिनिर्णय तदनुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु प्रेषित रेफरेन्स का उत्तर उपर्युक्तानुसार दिया जाता है।

8. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2111.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार में सर्वसं सैनिक अस्पताल नसीराबाद जिला अजमेर (राज.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय - जयपुर के पंचाट (संदर्भ संख्या 10/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.11.2019 को प्राप्त हुए थे।

[सं. एल-14011/01/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2111.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2015) of the Central Government Industrial Tribunal cum-Labour Court- Jaipur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Military Hospital Nasirabad, Ajmer Rajasthan & Others, and their workmen which were received by the Central Government on 05.11.2019.

[No. L-14011/01/2015- IR (DU)]

V. K. THAKUR, Section Officer

अनुबंध

केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर सी.जी.आई.टी. प्रकरण सं. 10 / 2015

पीठासीन अधिकारी : राधामोहन चतुर्वेदी

रेफरेन्स नं. L-14011/01/2015-IR (DU) दिनांक 16/02/2015

सत्यनारायण पुत्र स्व. श्री मानसिंह

निवासी रामदयाल मौहल्ला, नसीराबाद जिला अजमेर जरिये अजमेर जिला असंगठित श्रमिक संघ अजमेर।

v/s

- कर्नल / मेजर वास्ते कमाण्डेन्ट व प्रभारी नियंत्रक, सैनिक अस्पताल नसीराबाद जिला अजमेर (राज.)
- डायरेक्टर / डीप्टी डायरेक्टर एम.एस. सिविल इन्टीग्रेटेड हैड क्वार्टर्स ऑफ एम.ओ.डी. (आर्मी) एडजटेन्ट जनरल ब्रांच डी.टी.आई. जनरल ऑफ मेडिकल सर्विसेज (आर्मी) "एल" ब्लॉक, नई दिल्ली – 1100011

प्रार्थी की तरफ से : कोई उपस्थित नहीं

अप्रार्थी की तरफ से : कोई उपस्थित नहीं

: अधिनिर्णय :

दिनांक : 04. 10. 2019

- श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 16.02.2015 को निम्नांकित विवाद ओद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 उपधारा (1) (घ) एवं 2-ए के प्रावधानों के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया।

“क्या प्रबंधन कर्नल / मेजर वास्ते कमाण्डेन्ट व प्रभारी नियंत्रक, सैनिक अस्पताल नसीराबाद जिला अजमेर (राजस्थान) व 2 – श्रीमान एडजूटेंट जनरल इन्टीग्रेटेड हैड क्वार्टर्स ऑफ एम.ओ.डी. (आर्मी), एल ब्लॉक, नई दिल्ली द्वारा कर्मकार स्व. श्रीमती शान्ति देवी के पुत्र श्री सत्यनारायण को अनुकम्पात्मक नियुक्ति से वंचित करना वैधानिक एवं न्याय संगत है, यदि नहीं तो प्रार्थी किस राहत का और कब से पाने का हकदार है ?”

- उपर्युक्त विवाद अधिकरण में प्राप्त होने पर उभयपक्ष को सूचना पत्र जारी कर आहूत किया गया तथा प्रार्थी को अपने दावे का अभिकथन प्रस्तुत करने का निर्देश दिया गया।

3. इस निर्देश के अनुपालन में दिनांक 24.04.2015 को प्रार्थी की और से अजमेर जिला असंगठित श्रमिक संघ, अजमेर द्वारा दावे का अभिकथन प्रस्तुत किया गया, जो संक्षेप में इस प्रकार है। प्रार्थी सत्यनारायण की माता सैनिक अस्पताल नसीराबाद में सफाई कर्मचारी के स्थायी पद पर कार्यरत थी। जिसकी नियुक्ति 29.5.79 को हुई थी। दिनांक 4.2.2012 शान्ति देवी का निधन हो गया। श्रीमती शान्ति देवी की मृत्यु के बाद प्रार्थी को सेटलमेन्ट की समस्त धनराशि और प्रोविडेन्ट फण्ड की राशि भी प्राप्त हुई। प्रार्थी ने अपनी माता की मृत्यु के बाद अनुकम्पात्मक नियुक्ति पाने हेतु अप्रार्थीगण को समस्त दस्तावेजों सहित प्रार्थना—पत्र प्रेषित किया लेकिन अप्रार्थीगण ने प्रार्थना पत्र निरस्त कर दिया। इस प्रकार प्रार्थी ने सहायक क्षेत्रीय श्रमायुक्त केन्द्रीय अजमेर के समक्ष औद्योगिक विवाद प्रस्तुत किया। लेकिन दोनों पक्षों के बीच समझौता संभव नहीं हुआ। सैनिक अस्पताल नसीराबाद में अनुकम्पा के आधार पर कई कर्मचारी सेवारत हैं। अतः प्रार्थी को उसकी माता के निधन के बाद अनुकम्पात्मक नियुक्ति प्रदान करने का आदेश पारित करवाया जावें।

4. उक्त दावे के नोटिस विपक्षीगण को पंजीकृत डाक से प्रेषित किये गये, किन्तु विपक्षीगण ने उपस्थित होकर वादोत्तर प्रस्तुत नहीं किया। दिनांक 11.7.2019 को विपक्षीगण के विरुद्ध एकपक्षीय कार्यवाही का आदेश देते हुए यह विवाद प्रार्थी की एकपक्षीय साक्ष्य हेतु दिनांक 24.9.2019 को नियत किया गया। किन्तु दिनांक 24.9.2019 को भी उभयषक की ओर से कोई उपस्थित नहीं हुआ। इस प्रकरण में दिनांक 8.8.2019 से प्रार्थी पक्ष लगातार अनुपस्थित चला आ रहा है। इस स्थिति में प्रार्थी की एकपक्षीय साक्ष्य समाप्त कर दी गई।

5. पत्रावली के अवलोकन से यह प्रकट होता है कि प्रार्थी इस विवाद के सम्बन्ध में कोई साक्ष्य प्रस्तुत नहीं करना चाहता है और इस कारण वह प्रकरण के अग्रसरण में रुचि नहीं ले रहा है।

6. प्रार्थी की साक्ष्य के अभाव में यह निर्णय नहीं किया जा सकता है कि प्रार्थी दावे के अभिकथनों में वान्छित अनुतोष प्राप्त करने का अधिकारी है। इसलिये इस न्यायालय को सन्दर्भित विवाद का न्यायनिर्णयन करते हुए यह अधिनिर्णय पारित किया जाता है कि प्रबंधन एवं नियंत्रक, सैनिक अस्पताल नसीराबाद जिला अजमेर एवं एडजूटेंट जनरल इन्टेरेटेड हैड क्वार्टर्स ऑफ एम.ओ.डी. (आर्मी), एल ब्लॉक, नई दिल्ली द्वारा स्वर्गीय श्रीमती शान्ति देवी के पुत्र श्री सत्यनारायण को अनुकम्पात्मक नियुक्ति से वचित करना अवैध नहीं है और प्रार्थी साक्ष्य के अभाव में कोई अनुतोष पाने का अधिकारी नहीं है।

7. अधिनिर्णय तदनुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु सन्दर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

8. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2112.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स महाप्रबंधक (एचआर), नेशनल थर्मल पावर कंपनी लिमिटेड मौडा, नागपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,- नागपुर के पंचाट (संदर्भ संख्या 28/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.11.2019 को प्राप्त हुए थे।

[सं. एल-42011/98/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2112.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2016) of the Central Government Industrial Tribunal-cum-Labour Court- Nagpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager (HR), National Thermal Power Co. Ltd. Mouda, Nagpur & Others, and their workmen which were received by the Central Government on 13.11.2019.

[No. L-42011/98/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No.CGIT/NGP/28/2016-17

Date: 24.10.2019

Party No.1(a): The General Manager (HR),
 National Thermal Power Co. Ltd.
 Mouda Thermal Power Project Office, Post & Tah,
 Mouda,
 Nagpur-441104.

Party No.1(b): The Manager, Bridge & Roof Co. Ltd.,
 N.T.P.C. Mouda, Post & Tah. Mouda,
 Nagpur-441104.

V/s.

Party No.2: The President,
 Mouda Vij Prakalp Majdoor Sangh Officer:
 House of Sh. Prem Rodekar, Tarsa Road, Shiv Nagar,
 Kanhan, Tah. Parseoni,
 Nagpur-441404

AWARD

(Dated: 24th October, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of N.T.P.C. and their Union, Mouda Vij Prakalp Mazdoor Sangh for adjudication, as per letter **No. L-42011/98/2016-IR (DU) dated 17.11.2016** with the following schedule:-

"Whether the action of the management of N.T.P.C. Mouda, Distt. Nagpur and the Contractor, M/s. Bridge & Roof Co. Ltd, Mouda, Distt. Nagpur in termination of the Service of the applicant Shri Shikant Amirkha Pandey, Ex-worker w.e.f. 29.07.2015, is fair just or legal? If not, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the Union, Mouda Vij Prakalp Mazdoor Sangh ("The Union" in short) filed the Statement of Claim and the Management of N.T.P.C. ["Party No.1(a)" in short] filed its Written Statement and the other party is Bridge & Roof Co. Ltd. ["Party No.1(b)" in short].

3. Admitted facts of this case is that, notice of the Party No.1 (b) i.e. contractor is served on him on 29.12.2016, but he did not appear so, proceedings against him is deemed to be an ex-parte, because he did not appear and did not file written statement.

4. On behalf of Union, workman filed statement of claim by asserting that, on 25.07.2015 the workman (Shrikant Amirkha Pandey) performed his work on the water Header, which weight is 32 tons, but at about 4.00 p.m. the water header fall on the body of the workman (Shrikant A. Pandey) while performing his work as a Grinder and thereby the workman sustained injury to his whole body. Rajnath Saheb shifted the workman (Shrikant Pandey) at Orange City Hospital for treatment. The Party No.1 (b) admitted the workman in the said Hospital on 25.07.2015 and in the said hospital operation of left leg ankle was performed by the Doctor's of this Hospital. The whole expenses of Hospital bear by the Party No.1 (b). The Officers of Party No.1(b) shifted the workman at his rented house with an assurance that, they will provide the future medical aid and will pay the Half Monthly salary to the workman during the sickness period.

5. According to the workman, on 04.11.2015 he approached with Party No.1(b) and asked to provide further medical aid as severe pain rated in both legs and body of him. He prayed to provide further medical and where on that count Shri Pradhan Saheb who were present on spot told him not to show his face again and if sows, then he will thrown to boiler and out him from the premises of the Company. He also asserted that, he is a poor workman and his whole family depends on him. That, he has .occurred Rs. 80,000/- for traveling expenditure for taking the treatment for attending the concerned hospital from his home to clinic. He has made expenditure near about 50,000/- on meal of four members of the family, when he was in hospitalized. He would have to spend Rs. 80,000/- for taking out plat from leg.

6. According to workman, the whole burden of family is on the shoulder of workman and due to want of money, the workman face starvation. The Party No. 1's never ready provide medical aid and never ready to pay the salary to the workman and also prayed that, direct the management to reinstate the workman in the service with full back wages and also prayed to grant Rs. 25, 00,000/- as lumpsum compensation.

7. Management filed written statement with preliminary objection by asserting that, there existed no any employer employee relation to the management and workman. So, no cause of action arise between them and also raised an objection there is no any industrial dispute between them, so this Tribunal have no jurisdiction. Party No. 1(a) denied all material fact in the statement of claim by asserting that, it is a matter of record and specific denial, but they admitted the content of Para no. 2 of statement of claim i.e. N.T.P.C. is a limited company under Central Government and provisions of Industrial Dispute Act are applicable to them. They also asserted that, burden of proof lies on the petitioner, so he was directed to strictly prove the same. According to Party No.1(a) the content of Para no. 5 of statement of claim are denied and also occurrence of the alleged accident dated 25.07.2015.

8. As mentioned in the Para 8 of statement of claim request of workman were rejected as there is no such provision in the Act. According to them content of Para 9 and 10 of statement of claim are formal in nature and need not to be reply. According to Party No.1(a) the document filed by the workman are denied and according the them workman did not entitled any relief.

Point of determination:-

1. "Whether there is employer employee relation between Party No. 1(a) and workman?"
2. "Whether termination of the employee is fair, just and legal?"
3. "Whether the employee is entitled for compensation or re-instatement in service with full back wages?"

Reason for decision:-

9. On behalf of workman, in his written notes of augment it is argued that, the Party No. 1(b) admitted the workman in the said Hospital on 25.07.2015 and in the said Hospital operation of left leg ankle was performed by the Doctors of the Hospital. The expenses of hospital bear by the Party No.1 (b) and after discharged, officers of party No. 1(b) shifted to the workman at his rented house with an assurance that, they will provide the future medical aid and will pay the Monthly salary to the workman during sickness period, but management fails to provide safety measure which are required for work. According to him he suffered 80% permanent disability but party no. 1 did not provide medical aid. This argument was denied by the party No. 1.

10. On behalf of Party No.1(a), written notes of argument was filed and denied all argument which is raised by the workman. According to Party No.1(a) there exist no employer employee relationship and also argued that, workman has failed to prove that, he was in the employment with Party No.1(a) i.e. NTPC neither has filed any documentary evidence to prove its claim. The workman did not file any appointment letter neither filed any termination letter on record. According to them, Medical Certificate issue by the Orange City Hospital Nagpur dated 16.10.2015 (Exh. W-7), which demonstrates that the workmen was found fit to resume his duties, but it seems that the workmen choose not to join duties and instead of this filed this false case making the party NO. 1(a) as party to the proceedings for no cause and for no reasons.

11. On behalf of workman, he examined himself as P.W.1. In his chief examination (evidence on affidavit) he support his statement of claim by asserting that he got permanent disability of 80% and he expenses Rs.90,000/- for the treatment of his leg, but in his cross-examination Para 11 he admitted that, his accident was taken place on 25.07.2015 at Boiler No. 4 at NTPC Mouda. He also admitted that, "I was employed by the Contractor namely, Bridge & Roof Company Ltd. at the relevant time. It is true to say that, after accident, I was admitted and operated at Orange City Hospital, Nagpur. He also admitted that, "I cannot say that, who carried me to the hospital. It is true to say that, I had been discharged by the hospital by document no. W-7, but according to witness fitness certificate issued by the Orange City Hospital is false, but he admitted that, he did not file any copy of complaint with respect to Medical Certificate issued by the Orange City Hospital, before this Tribunal", but Party No.1(a) did not examine any witness in support of their defence, so adverse inference may be drawn against the Party No.1(a) regarding their defence.

12. "This Tribunal on 25.07.2019 directed to the workman to produce original medical documents/bill with prescription and to prove them by following concern doctor otherwise adverse inference will be drawn against him. In compliance of this direction on 27.06.2019 workman filed some original documents i.e. enquiry report of medical board, but he did not examine concerned Doctor who issue the Medical Certificate on 29.01.2016 and did not examine any Doctor of Orange City Hospital who discharge him and certify to resume his duty and he also did not examine concerned Orthopedic Doctor who is the member of medical board for handicap. So, in my humble opinion this certificate not

proved by the workman by concerned Doctor, so in my opinion workman fails to prove that, in this accident he suffered 80% of permanent disability and also fails to prove that, this disability with the reference to whole body or particular leg.

13. Ongoing above discussion my humble opinion is that, Shrikant Pandey P.W-1 is interested person and he concealing some facts or twisted some facts. Unfortunate part of this case is that, Party No.1(a) did not examine any witnesses in support of discharge certificate of Orange City Hospital. In this way, evidence of workman Shrikant Pandey is not appear to be reliable, because concerned Doctor was not examined by him.

14. Now, I want to see the legal position:-

(a) Section 2(t) of the Persons with Disabilities [Equal Opportunities, (Protection of Rights and Full Participation) Act, 1995 (In short “the Act”)]

“person with disability” means a person suffering from not less than forty percent. Of any disability as certified by a medical authority.”

Section 2(i) “disability” means- “(a) blindness; (b) low vision; (c) leprosy – cured; (d) hearing impairment; (e) locomotor disability; (f) mental retardation; (g) mental illness.”

(b) Hon’ble Allahabad High Court interpreted section 47 in following way :-

“Section 47 protects the interest of such an employee by offering alternative job, and if it is not possible to adjust the employee against any post, he will be kept on supernumerary post until a suitable post is available or he attains the age of his superannuation, whichever is earlier. The aim of an object of enactment of section 47 of the Act, is to provide protection to such employees who have suffered disability to the extent of blindness, low vision, leprosy-cured, hearing impairment, locomoter disability, mental retardation, and mental illness. – Peer Baksha v. Regional Manager, U.P.S.R.T.Corp., Kanpur 2011(130) FLR495(Allahabad H.C.).”

(c) W.P. No.4700/2010, Dhammadip Bhauraao Mankar vs. Union of India. Date of order 15 November 2011, in the Hon’ble High Court bench Nagpur, in which following principles were laid down:-

15(a). “Provisions of above mentioned 1995 Act in Section 2(i) define “disability”. Percentage of disability is not stipulated in this provision. Section 2(t) defines “persons with disability” and legislature has chosen to specify that it means a person suffering from not less than forty percent of any “disability” as certified by a medical authority.”

(b) “It is because of this position only that his service conditions appear to have been protected. The legislature has stated that if on account of such disability, he is not suitable for the post which he was earlier holding; employer can shift him to some other post, “with same pay scale and service benefits”. ----- Such employee should be kept on a supernumerary post until a suitable post is available or then the employee who acquired disability attains the age of Superannuation. Thus provisions made by legislature are by way of exception to normal law and therefore show emphasis upon its intention to protect service i.e. pay scale and service benefits of person who acquired disability while in employment. It is also evident from Sub Section (2) of Section 47 which stipulates that promotion cannot be denied to such a person merely on the ground of his disability.”

It is, therefore, apparent from scheme of above 1995 Act that the person who acquires disability while in employment has not been treated as “person with disability” and provisions of Section 2(t) are therefore irrelevant in his case.

16(a) In Case of Geetaben Ratilal Patel Vs. District Primary Education Officer, (MANU/SC/0616/2013) in which Hon’ble Supreme Court held that, “Commissioner having declared order of dismissal as void, it was not open for High Court to interfere with such order of Commissioner and to restore illegal order of dismissal--Order passed by Commissioner—Upheeld--Authorities directed to reinstate appellant in service immediately and to pay her regular salary every month--Order passed by Single Judge and Division Bench of High Court--Set aside”. ----- “Empower the Commissioner, to look into the complaint with respect to the matters relating to deprivation of rights of persons with disabilities and non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions issued by the appropriate Governments or local authorities and to take up the matter with the appropriate authorities for the welfare and protection of rights of persons with disabilities including matter relating to dispensation with service or reduction in rank”.

(b) “There is nothing on the record to suggest that, the respondent authority got the appellant examined by a Government Doctor to determine the duty to be assigned to her. In view of her reinstatement, now the respondent authority may get opinion of the doctor for assigning her duty. In case the appellant is not in a position to perform the normal duty because of her mental condition, the competent authority will apply proviso to section 47 (1) of the said act.

(c) In the case of Kunal Singh Vs. Union of India, Hon'ble Supreme Court held that, “Language of section 47 is plain of certain casting statutory obligation on the employer to protect an employee acquiring disability during service. The argument of the learned counsel for the respondent on the basis of definition given in Section 2(t) of the Act that benefit of section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired ‘disability’ within the meaning of Section 2(i) of the Act and not a person with disability”.

(d) “It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence rule 38 of the Central Civil Services (Pension) rules cannot override section 47 of the Act. Further section 72 of the Act also supports the case of the appellant, which reads :- “72. Act to be in addition to and not in derogation of any other law. The provisions of this Act, or the rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities.”

17(a) Shri Shrikant Pandey was employed by the Party No. 1(b) i.e. Bridge and Roof Company Limited, on 16.02.2015 on the post of Grinder. Accident took place on 25.07.2015 in performing his work at Boiler at NTPC campus. After accident, treatment was taken place at Orange City Hospital up to 29.07.2015, and then he discharged. He sustained injury on left leg ankle and operation was performed, all the expenses were carried out by the Party no. 1(b).

(b) According to the Management, Fitness Certificate was issued by the Orange City Hospital for resuming his duty, but he did not join. He was no more employee of NTPC as I observe, he did not prove Medical Board Certificate for disability and medical bills by legal evidence i.e. he did not examined the doctor, who issued this Disability Certificate and Discharge Certificate. So, he is not entitled for benefits of above 1995 Act.

(c) Workman did not file any Disability Certificate as provided under section 2(i) and 2(t) of the above Act and he did not present his case before Chief Commissioner or Competent Authority as provided under section 57, 66 and section 2(h) of this Act. So in my opinion, this Tribunal has no jurisdiction to pass an order under above Act.

(d) Judging the present position and touchstone of the above case laws, workman fails to prove his appointment, termination from services, disability certificate, prescriptions and medical bills. He also fails to prove that, he approached to the Competent Authority or Commissioner under section 57, 50 and 2(h) of the above Act. According to the management, he is not in service, because he did not join his duties after obtaining Fitness Certificate and he is no more in service. According to him, he was the employee of the contractor. In this way he fails to prove that action of the management in terminating the services of him was illegal and unfair. So, in my humble opinion, workman is not entitled for reinstatement with full back wages, but it appears that, he was the employee of Party No. 1 (b) and they did not provide him any compensation after discharge from hospital for taking care and post treatment, because neither they appeared in the Court proceedings after service of the notice nor proved their defence to prove that, they paid any compensation to him. So in my opinion, he is entitled for lumpsum compensation of Rs. 5, 00,000/- (Rupees five lakhs only) from Party No.1 (b). If Party No. 1(b) fails to paid this compensation, he may recover this amount from Party No.1(a) with interest and Party No. 1(a) may recover this amount with interest from Party No. 1(b) as per law. Hence it is ordered.

ORDER

The action of the management of N.T.P.C. Mouda, Distt. Nagpur and the Contractor, M/s Bridge & Roof Co. Ltd, Mouda, Distt. Nagpur in termination of the service of the applicant Shri Shikant Amirkha Pandey, Ex-worker w.e.f. 29.07.2015, is fair, just and legal, but he is entitled for Lumpsum compensation of Rs. 5, 00,000/- (Rupees five lakhs only) form Party No. 1(b), which is payable within one month from the publication of this award in official gazette, failing to which, amount due to the workman will carry interest of 6% per annum from the date of due to the workman to the date of actual payment of the amount to the workman. He is not entitled for any other relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2113.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत संचार निगम लिमिटेड, हमीरपुर (एच.पी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय - चंडीगढ़, के पंचाट (संदर्भ संख्या 250/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुए थे।

[सं. एल-40012/106/2012-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2113.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 250/2013) of the Central Government Industrial Tribunal-cum-Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Bharat Sanchar Nigam Ltd., Hamirpur (HP) & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-40012/106/2012-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 250/2013

Registered on:-08.04.2013

Surinder Singh S/o Rattan Singh C/o R.K. Singh Parmar, working President,
Punjab INTUC, 211-L, Brari Partap Nagar, Nangal Dam, Ropar.

...Workman

Versus

The General Manager(T), Bharat Sanchar Nigam Ltd., Hamirpur (HP).

...Management

AWARD

Passed on:08.10.2019

Central Government vide Notification No. L-40012/106/2012-IR(DU) Dated 26.02.2013, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of BSNL, Una, Himachal Pradesh in terminating the services of Shri Surinder singh S/o Sh. Rattan Singh w.e.f. 13.07.2007 is legal, just and valid under the ID Action 1947? If not, what relief the workman is entitled to and from which date?”

1. Both the parties were served with notices. The workmen appeared and filed statement of claim, alleging therein, that workman joined the services of management as Skilled Worker (Telephone Mech.) under the S.D.O.(T) at Mehatpur from February 2003 and rendered his duties till 12.07.2007 when his services were terminated without giving any notice or retrenchment compensation in lieu of notice according to the provisions of Section 25-F of the Industrial Disputes Act, 1947. The workman was personally pursuing with the management to join duty but, ultimately, management refused to work on 17.04.2012, resulting demand notice to the management. The workman was drawing Rs.1,800/- per month at the time of termination and juniors were engaged with the management by taking the policy of hire and fire. He has facing unemployment from the date of his illegal termination. It is therefore, prayed that the order of reinstatement with continuity of service with full back wages may kindly be passed against the management.

2. Management has filed its written statement, alleging therein that applicant/workman was engaged as a labour to help in clear the landline telephone network break down and was engaged on demand basis from August 2003 to February 2003. The respective working days are mentioned in Para 1 of the written statement. The workman was never engaged on regular basis but on daily wages for few days. Workman was never engaged in 2007 as alleged by the workman. This Tribunal has got no jurisdiction as workman is seeking regularization/appointment to a post in Bharat Sanchar Nigam Ltd., which falls under the jurisdiction of Central Administrative Tribunal. Person like applicant/workman have no right to be regularized in the light of the judgment of Secretary State of Karnataka Vs. Uma Devi, 2006(2) SCT 462. The allegation of violation of Section 25-F(a) and 25-F(b) are concerned, there is no merit in the allegation. This statement has been filed in the year 2012 without any cogent reason which deserves to be dismissed. Management while citing petition no.11531 of 2000, titled State of Gujarat Vs. Shantilalsogabhai Vasava C/o Bhartiya Mazdoor Sangh, decided on 30.08.2010, in which it is alleged that mater of daily wages has been settled in the above case. The workman is neither a workman nor the respondent-management is an industry as such, objection is not maintainable. The disengagement of casual labour by the government department would not come under the definition of ID Act. Even a casual labour has no right to remain in the employment of respondent-management for all times to come and his service could be terminated at any time without giving any notice. The management while mentioning different

judgments of apex court as well as High Court has averred that an appointment is liable to be terminated in accordance with the terms and conditions of appointment. A daily wager has no vested right to continue in employment with the management due to non-availability of work.

3. In support of his case, the workman Surinder Singh appeared in the witness-box and tendered his evidence by way of affidavit Ex.A1, who has been cross-examined by the learned counsel of the management. This witness has proved Ex.A2 and Ex.A3 filed with the affidavit. Ex.A2 is an application submitted before S.D.O.(T), Mehatpur, dated 12.01.2009 for re-employment and Ex.A3 is an information send by the Sub-Divisional Officer(T), to the workman that his reinstatement is not possible in the management. During the course of cross-examination, this witness has stated that he was paid on monthly basis and denied the suggestion that he worked only in the year 2003. This witness has also stated that he used to get salary after the year 2003 by cash and sometimes by cheque.

4. Management has examined R.K. Jaswal, Divisional Engineer, BSNL, who has proved his affidavit Ex.R1 filed by him as evidence. The affidavit submitted by the witness is in the line of the facts alleged in the written statement. He has stated that there was no musterroll in the department. He has further alleged that he has no knowledge whether any attendance register was maintained. This witness has further accepted that neither any notice was served to the workman nor any retrenchment compensation was paid to the workman by the management.

5. I have heard Sh. R.K. Parmar, AR of the workman and Sh. K.K. Thakur, AR for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned ARs during the course of arguments.

6. Before examining the bone of contention between the parties, it is pertinent to mention that this is a case in which the management has admitted that the workman was employed by the respondent as daily wager in the year 2003 on demand basis who worked with the management from August 2003 to February 2004. According to the management, workman was engaged on daily wages and worked as such for few days in a month. This is a specific case of the management that he never worked in the year 2007 as is alleged in the claim petition. Contrary to this, the specific case of the workman is that while joining with the management in the month of February 2003 as a skilled labour he continued till 12.07.2007 when his services were terminated. The workman has not pleaded nor gave any evidence that he was duly appointed or any appointment letter had been issued to him for the engagement with the management. According to the workman, he was drawing Rs.1,800/- per month at the time of termination but there is nothing on record in the form of documentary evidence that he was getting Rs.1,800/- per month in the month of February 2007 when he allegedly terminated by the management.

7. During the course of arguments, learned AR of the management has contended that workman does not fall within the definition of workman as is defined under Section 2(S) of the Act. It is not disputed that workman has worked with the management even though as daily wager so, to my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532, wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

8. Next submission made by the learned AR is that management does not come within the definition of "Industry". It is worthwhile to mention here that the definition of 'Industry' as provided under Section 2(J) of the Act, is in two parts. In its first part it means any business, trade, undertaking, manufacture or calling of employers. This part of definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine when an industry is and what the cognate expression 'industrial' is intended to convey. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. This part gives extended connotation. If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But, the second part alone cannot define 'Industry'. An industry is not to be found in every case of employment or service. By the inclusive part of the definition the labour force employed in an industry is made an integral part of the industry for purposes of industrial disputes although industry is ordinarily something which employers create or undertake. Before the work engaged in by an employer can be described against industry, it must bear the definite character of 'trade' or 'business' or

‘manufacture’ or ‘calling’ or must be capable of being described as an undertaking resulting in material goods or material services. Where an activity is to be considered as an industry, it must not be casual but must be distinctly systematic and the work for which workmen are employed must be productive and the workmen must be following an employment, calling or industrial avocation. The word ‘industry’ must take its colour from the definition and that it discloses that a workman is to be regarded as one employed in an industry if he is following one of the vocations mentioned in conjunction with his employers engaged in the vocation mentioned in relation to the employers.”

9. Hon’ble Apex Court in the case of **Bangalore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266**, dealt at length with the ambit and scope of expression “industry” as defined in Section 2(J) of the Act and held as under:-

- (a) *Where a complex of activities some of which qualify for exemption, others not involves employees on the total undertaking some of whom are not “workman” as in the University of Delhi case (supra) or some departments are not productive of goods and services, if isolated, even then the predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be “industry” although those who are not ‘workmen’ by definition may not benefit by the status.*
- (b) *Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption not the welfare activities or economic adventures undertaken by Government or Statutory bodies.*
- (c) *Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within section 2(j).*
- (d) *Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.*

Seven Judges Bench of the Hon’ble Supreme Court in the case of Bangalore Water Supply(supra) has laid down triple test for determining whether a particular establishment is industry or not. The triple test is where (a) systematic activity (b) organised by cooperation between employer and employee(the direct and substantial element is commercial (c) for the production or distinction of goods and services to calculate to satisfy human wants and wishes *prima facie* is an “Industry” in that enterprise. So far as the case in hand is concerned, there is no doubt that BSNL is a government undertaking, financed by the Govt. of India for providing services of telephone etc. to the consumer with the help of employer and employee at the cost of prescribed fees, having systematic activities and governed by rules and regulations. The reference may be made to the judgment of the Hon’ble Apex Court in ***Bharat Sanchar Nigam Ltd. Vs. Maan Singh, 2012(I), SCT page 641.***

10. Similarly, arguments advanced by the learned counsel for the management regarding the jurisdiction of the Central Administrative Tribunal and Industrial Tribunal I find no force in the light of the judgment of the Hon’ble Supreme Court in the case of **Telecom District Manager & others. Vs. Keshab Deb.(Civil Appeal No.3324 of 2008 arising out of SLP (Civil) No.9494 of 2004-decided on 6/5/2008** where a driver/casual labour on daily wage basis, serving in the Directorate of Telecommunications at Dimapur, had filed an application before the Central Administrative Tribunal, Gauhati, challenging the order of his termination by his employer and the Gauhati Bench of CAT had passed an order, holding the termination order to be illegal. Before the Apex Court, the department/employer had raised the contention as regards jurisdiction of the CAT. The Hon’ble Supreme Court while holding that an employee who claims himself to be a workman, will have a right of election in the matter of choice of forum either before Industrial Tribunal or before Central Administrative Tribunal, observed in para 14 as under:-

In a case of the present nature where inter alia a employee maintains a writ petition not only on the ground of violation of equality clause enshrines under Article 14 of the Constitution of India but also on the ground of violation of provisions of the Industrial Disputes Act, 1947, he has an option to choose his own forum. Section 28 of the Administrative Tribunal Act, 1985 does not bar the jurisdiction of the Central Administrative Tribunal. It saves the jurisdiction of the Industrial Tribunal. An employee who claims himself to be a workman, therefore, will have a right of election in the matter of choice of forum.....”

11. Last but not least, question remains for consideration is whether workman was employed in the month of February 2003 and he served as a skilled worker till July 2007 as he has alleged in his claim petition. The burden lies on the workman to prove that he was engaged as a skilled worker(Telephone Mechanic) and performed his duty continuously till 12.07.2007. There is no dispute about the preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240

days or more in a calendar year. In this regard, reference may be made to Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikhubhai Meghajibhai Gavda (2012) 1 SCC 47.

12. The question arises whether workman as a workman has been able to prove his regular employment with the management from February 2003 to 12.07.2007. It can be rightly observed that there is no documentary evidence at all regarding the engagement of workman with the management after the month of February 2004. The documents filed by the management along with affidavit regarding the details of payment made to Surinder Singh, workman against the work done under the S.D.O.(T), Mehatpur, reveals that he was in the employment of the management upto March 2004 though there was a break in the working days. It is pertinent to mention that as per his own documents, workman was not monthly paid instead he was paid on daily wages. Similarly, the photocopies of the receipt of wages paid by the management to the workman reveal that he was lastly paid by the management on 17.03.2004. There is nothing on record to prove that workman was either performed his duties or paid after the month of 2004. According to the workman, he was paid in the form of salary and after the year 2003, sometimes by cheque but he has not filed any cheque or bank-account slip to show that any amount of wages had been paid by the management through cheque or by transferring the salary amount to the account of the workman. Similarly, there is nothing as a documentary evidence to prove that he had worked with the management till 12.07.2007. It is relevant to observe that claimant/workman has not stated that his attendance was marked by the management or any musterroll had been maintained by the management. Thus, it is crystal clear that workman is unable to prove that he worked with management after the month of March 2004.

13. There is another aspect of the case, if it is presumed for the sake of arguments that he was terminated by the management on 12.02.2007 then why he remained silent for five consecutive years and does not make any attempt either by any representation before the management or seek legal remedy from the Courts. According to the claim statement, workman was trying to get reinstated with the management, which is clearly denied by the management. It does not appear reasonable that if a person is terminated by the management from the year February 2007, he will remain silent for such a long time. The Ex.A2, which is in the form of representation bears date 12.01.2009 but there is no any receipt of the representation by the management as such, its genuineness is also doubtful. No doubt that the demand notice dated 18.04.2012 is send by the workman to the management which is promptly replied by the management vide its letter dated 15.05.2012 copy of which is attached by the workman as Ex.A3 with its affidavit. Thus, there is a long gap of five years to make a claim before the management for his reinstatement by the workman. It appears that in order to make a claim before the Industrial Tribunal, this attempt is made by the workman otherwise there is no question for wait such a long time in spite of the alleged termination by the management.

14. Now the vital question arises for consideration is whether the alleged termination of the workman by the management from 12.07.2007 is legal, just and valid under the ID Act? Section 25-F of the ID Act specifically deals with such type of dispute between the parties. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the management to be illegal and void under the law. Going through the evidence produced by the workman as well as by the management, it can be safely observed that there is nothing on record to prove that workman was continuously rendering his services upto 12.07.2007 as is alleged by him in the claim statement. The requirement of issuing one month notice or retrenchment compensation is subject of proof that workman has rendered 240 days service before the preceding year of his termination. Unfortunately, workman has miserably failed to prove that he continuously worked upto 240 days with the management before his alleged termination on 12.07.2007 as such, there is no need for any notice or retrenchment compensation by the management according to the provisions of Section 25-F of the Industrial Disputes Act, 1947.

15. Having regard to the legal and factual position said above, this Tribunal is of the firm view that claimant/workman is miserably failed to prove that he was posted on regular basis as a skilled worker by the management where he served from February 2003 to 12.07.2007 as such, he is not entitled for any relief from this Tribunal.

16. The reference is answered accordingly. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2114.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स त्रावणकोर टाइटेनियम उत्पाद लिमिटेड, तिरुवनंतपुरम कोचीन और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय – एन्ऱाकुलम, के पंचाट (संदर्भ संख्या 34/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल-42011/150/2018-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2114.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2018) of the Central Government Industrial Tribunal-cum-Labour Court- Ernakulam, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Travancore Titanium Products Ltd., Thiruvananthapuram (Cochin) & Others, and their workmen which were received by the Central Government on 19.11.2019.

[No. L-42011/150/2018-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Tuesday the 29th day of October 2019, 7 Karthika 1941)

ID No. 34/2018

Workman	:	The General Secretary Titanium Products Labour Union INTUC House, Kunnumpuram Thiruvananthapuram - 605 036
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By M/s.Mathews K.Philip

Management	:	The Managing Director Travancore Titanium Products Ltd Titanium P.O., Kochuveli Thiruvananthapuram- 695012.
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By Adv.B.S. Krishnan Associates

This case coming up for final hearing on 15-10-2019 and this Tribunal-cum-Labour Court on 29-10-2019 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-42011/150/2018-IR(DU) dated 19-11-2018 referred the following dispute for adjudication by this Tribunal.
2. The dispute referred is;

“Whether the action of the management of M/s. Travancore Titanium Products in proposing to promote Shri.L.Jayakumar to the post of supervisor-electrician in contravention to the provisions of the subordinate service rules of Travancore Titanium Products Ltd is fair and justified? If not, to what relief they are entitled?”

3. After receipt of the reference from the Govt., notice was issued to both the parties, i.e., General Secretary, Titanium Products Labour Union and Management, M/s. Travancore Titanium Products. The union entered appearance and filed claim statement along documentary evidence to support their claim. The Management also entered appearance and filed their written statement.

4. While so, the union filed a “not pressed memo” dt. 23.09.2019 stating that there is a possibility of settling the industrial dispute out of Court and the pendency of this Industrial Dispute may come in the way of settling the matter. The union further stated that in view of the above situation they are not pressing the present industrial dispute. Hence there is no scope for adjudication of this reference by the Tribunal.

In view of the above, a “no dispute award” is passed in this case and the reference is answered accordingly.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 29th day of October 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	- Nil
Witness for the Management	- Nil
Exhibits for the workman	- Nil
Exhibits for the Management	- Nil

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2115.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स नेशनल टेक्सटाइल कॉर्पोरेशन लिमिटेड, कोयम्बटूर कोचीन और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय – एनाकुलम, के पंचाट (संदर्भ संख्या 16/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुए थे।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2115.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2013) of the Central Government Industrial Tribunal-cum-Labour Court- Ernakulam, as shown in the Annexure, in the Industrial dispute between the employers in relation to The National Textile Corporation Ltd ,Coimbatore (Cochin) & Others, and their workmen which were received by the Central Government on 19.11.2019.

[No. 42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Wednesday, 16th day of October 2019, 24 Asvina 1941)

ID No. 16/2013

Workman	:	The General Secretary Textiles Workers Union (AITUC), Amballur, PO Alagappa Nagar, Kerala.
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By Adv.A. Jayasankar

Management : The General Manager,
 National Textile Corporation Ltd.,
 35-B Somasundaram Mills Road,
 Coimbatore – 641009.

By Adv.P.Ramakrishnan & C. Anil Kumar

This case coming up for final hearing on 22-8-2019 and this Tribunal-cum-Labour Court on 16-10-2019 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-42011/152/2012-IR(DU) dated 25-2-2013 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“Whether the action of the management of Alagappa Textiles in terminating the services of Shri Muraleedharan K and T.C.Prakashan for the alleged unauthorized absence w.e.f. 20-07-2010 is justified? If not, what relief they are entitled to?”

3. The Union filed statement of claim on behalf of the workman. According to the Union, Shri Muraleedharan. K and T.C.Prakashan were permanent employees of the management in Alagappa Textiles, Thrissur. They were proceeded against by the management alleging unauthorized absence for 95 days and 62 days respectively for the period from 1-1-2009 to 31-7-2009. Show cause notices were issued to Shri Prakashan on 11-5-2009 and 7-8-2009 respectively. Domestic enquiry was conducted against the workmen. The enquiry was conducted in gross violation of principles of natural justice and fairness. The workman was not permitted to be defended either by a lawyer or by a Union Representative. One Assistant Spinning Manager was examined as management witness and 3 documents were proved. There was no Presenting Officer and the Enquiry Officer himself examined the management witness. The workman was not permitted to cross examine the witness. The Enquiry Officer cross examined the workman also. The workman was not given an opportunity to adduce defence evidence. The workman was not even permitted to peruse Exhibit M-3 series i.e. copies of Muster Roll from January to July 2009. The Enquiry Officer submitted his report on 19-11-2009 finding the charges are proved against the workman. Another showcause notice was issued to Shri T.C.Prakashan on 12-2-2010 proposing the punishment of dismissal. The workman submitted his explanation on 16-2-2010. However ignoring the representation, management issued dismissal order on 20-7-2010. However the dismissal order was kept in abeyance because of the intervention by the Union. The management reinstated the workman by order dated 26-7-2010. Services of workman was finally terminated vide order dated 17-9-2010 alleging that the workman failed to comply with the conditions contained in the order dated 26-7-2010. The punishment of dismissal is excessive and disproportionate to the charges alleged and proved against the workman. The workman ought to have given an opportunity before a 2nd termination order was issued.

4. Three show cause notices were issued to Shri K.Muraleedharan on 11-5-2009, 4-6-2009 and 7-8-2009. A domestic enquiry was conducted against the workman in violation of the principles of natural justice and fairness. The workman was not permitted to defend his case through a lawyer or through a Union Representative. The Enquiry Officer himself cross examined the management's witness and the workman. The workman was denied an opportunity to adduce defence evidence. Even workman was not permitted to peruse Exhibit M-4 series. The Enquiry Officer returned a finding of guilt. The findings of the Enquiry Officer are perverse. Another show cause notice was issued to Shri K.Muraleedharan on 9-4-2010 proposing the punishment of dismissal. Though the workman submitted his explanation, the management ignored the same and issued an order of dismissal from the service of the management on 20-7-2010. Because of the Union intervention, the order was kept in abeyance and vide order dt. 26-7-2010, and the workman was reinstated. His services were thereafter terminated by an order dated 17-9-2010 alleging that the workman failed to comply with the conditions contained in the order dated 26-7-2010. The workman was not given an opportunity of personal hearing before the order of dismissal was issued by the management.

5. Though there are many employees who remained absent unauthorisely, the management victimized these two workmen and subjected them to unfair labour practice. They are out of employment and having no source of income to subsist.

6. Management filed Written Statement denying the above allegation. The workmen Shri T.C. Prakashan and Muraleedharan.K were chronic absentees. As unauthorised absenteeism among the workmen of the management was affecting the function of the management establishment, the management decided to take action against employees who are chronic absentees. Shri Prakashan T.C attended the work only for 5 days in Jan 2009, , 5 days in February 2009, 15

days in March 2009, 8 days in April 2009, 11 days in May 2009, 6 days in June 2009 and 9 days in July 2009. For the remaining days, he either availed eligible leave or remained absent without permission. The showcause notices issued on 26-2-09, 11-5-09 & 7-8-09 were not replied by him. Hence a domestic enquiry was ordered to examine the charges against Shri Prakashan. The enquiry was conducted in a fair and proper manner following principles of natural justice. All opportunities were given to Shri Prakashan to defend charges against him. The allegation that he was not allowed to be represented by a lawyer or Union Representative is denied by the management. The management side was not represented by a lawyer. The allegation regarding not permitting cross-examination by management witness is also denied by management. The workmen had all the opportunity to verify the muster roll and the averments to the contrary was denied by the management. The Enquiry Officer returned a finding of guilt against the workman. The finding of Enquiry Officer was based on evidence in enquiry. There is no perversity in the finding of Enquiry Officer. The Disciplinary Authority accepted the finding of Enquiry officer and a 2ndshow cause notice dated 12-2-2010 was issued to the workman. He submitted a reply on 16-2-2010. Since there was no mitigating circumstances, the Disciplinary Authority vide order dated 20-7-2010 dismissed Shri Prakashan T.C from the service of the management. On the intervention of the Union, the management agreed to keep the order of dismissal in abeyance and permitted the workman to work on condition that he should work atleast 22 days in a month. Since the workman failed to satisfy the above condition, his dismissal order was revived and implemented by order dated 17-9-2010.

7. Shri Muraleedharan K attended the work only for 11 days in January , 9 days in Feb, 9 days in March, 10 days in April, 9 days in May, 10 days in June and 13 days in July 2009. For the remaining days, he either availed eligible leave or was unauthorized absent. Shri Muraleedharan K failed to reply any of the show cause notices issued to him on 11-5-09, 4-6-09& 7-8-2009. Hence a domestic enquiry was initiated. The Enquiry Officer conducted the proceedings in a fair manner complying with principles of natural justice. The workman was afforded adequate opportunity to defend his case. All the allegations otherwise are denied by the management. The Enquiry Officer returned the finding that the charges against the workman are proved. The findings of the Enquiry Officer are based on evidence available on record and there is no perversity in the finding of the Enquiry Officer. The Disciplinary Authority accepted the findings of Enquiry Officer and 2ndshowcause notice was issued on 9-4-2010. The workman replied on 19-4-2010. Since there was no mitigating circumstances, the management dismissed Shri Muraleedharan from the service of the management vide order dated 20-7-2010. On intervention by the Union, the management kept the dismissal order in abeyance and permitted the workman to rejoin on the condition that he should work atleast 22 days in a month. Since he failed to satisfy the above condition, the final dismissal order was issued on 17-9-2010.

8. The enquiry against the workmen were conducted in a fair and equitable manner warranting no interference in the punishment imposed on them. In case the enquiry is found to be vitiated in any manner, the management requested for another opportunity to adduce fresh evidence in these proceedings.

9. Workman did not file any rejoinder though opportunities were given to them to do so.

10. Exbt.M1 and M2 enquiry files are marked by consent. No oral evidence is adduced either on the side of the management or workman.

11. On completion of pleadings, the following issues are taken up for final decision.

1. Whether the disciplinary enquiries were conducted in a fair and proper manner?
2. Whether the findings of the Enquiry Officer and Disciplinary Authority are supported by legal evidence?
3. Whether the punishment awarded to the workmen are proportionate to the charges proved against them?

12. **Issue no. 1**

The fairness and legality of the enquiry proceedings were taken up as a preliminary issue on the request of parties. According to the union, Shri.K.Muraleedharan and T.C.Prakashan were permanent employees of the management. They were proceeded against by the management for unauthorised absence. Shri. T.C.Prakashan received show cause notice on 07.08.2009. A domestic enquiry was conducted. The Enquiry Officer conducted the enquiry in gross violation of the principles of natural justice. The workman was not allowed the defence assistance of a lawyer or a co-worker. There was no Presenting Officer and the Enquiry Officer himself examined the management witness. The Enquiry Officer cross examined the workman. The workman was not given an opportunity to adduce evidence to prove his defects. The workman was not permitted to peruse Exbt.M3 series documents. The Enquiry Officer submitted his report on 19.11.2009 finding the workman guilty of charges levelled against him. The findings of the Enquiry Officer is perverse and unsustainable. The second show cause notice was issued to Shri.T.C.Prakashan on 12.02.2010 proposing a punishment of dismissal from service. The workman submitted his explanation on 16.12.2010. Without considering the explanation given by the workman the management issued dismissal order on 20.07.2010. The management kept the

dismissal order in abeyance vide order dt.26.07.2010. However his service is finally terminated on 17.09.2010 alleging that the workman failed to comply with the conditions in the order dt.26.07.2010.

13. Shri.K.Muraleedharan was issued 3 show cause notice on 11.05.2009, 04.06.2009 and 07.08.2009. The enquiry was conducted in gross violation of principles of natural justice. The Enquiry Officer submitted his report on holding that the workman was guilty of charges leveled against him. A second show cause notice was issued to Shri.K. Muraleedharan on 04.06.2009 proposing punishment of dismissal from service. The workman submitted his explanation on 19.04.2010. Without considering the explanation the management issued dismissal order on 20.07.2010. The management kept the order in abeyance vide order dt.26.07.2010. His services were finally terminated vide order dt.17.09.2010 on the ground that conditions on the order dt.26.07.2010 were violated.

14. The punishment of dismissal in both the cases are excessive and disproportionate to the charges allegedly proved in the enquiry. The workmen were not given an opportunity of being heard before the final orders of dismissal were issued. The dismissal was illegal and disproportionate to the charges alleged and proved against the workmen.

15. According to the management, unauthorised absenteeism among the workers was affecting the functions of the management. The management therefore decided to take action against employees who were showing chronic absenteeism. Shri. T.C. Prakashan attended the work only for few days from January to July 2009. Most of the time he remained unauthorisedly absent. Hence show cause notices were issued on various dates. He did not reply to the show cause notices. Hence a disciplinary enquiry was initiated. The enquiry was conducted in a fair and proper manner and Shri. T.C. Prakashan was given adequate opportunity to defend his case. The allegations that the workman was not permitted to defend his case and that the workman was not allowed to cross examine the management witness are denied by the management. The Enquiry Officer submitted his report holding that the charges were proved against the workman. There is no perversity in the findings of the Enquiry Officer. The management issued the second show cause notice to the workman and he submitted his reply. Since the Disciplinary Authority did not find any mitigating circumstances, Shri. T.C. Prakashan was dismissed from the service of the management establishment from 20.07.2010. On the request of the union the management kept the order in abeyance and permitted the workman to work on condition that he should work at least 22 days in a month. Since he failed to attend the work in 22 days in a month his dismissal order is confirmed on 17.09.2010.

16. Shri.K. Muraleedharan attended the work for only few days from January to July 2009. Most of the time he remained unauthorisedly absent. The show cause notice remained unanswered. Hence an enquiry was initiated and the Enquiry Officer returned a finding that the charges against Shri.K. Muraleedharan are proved. There is no perversity in the findings of the Enquiry Officer.

17. Shri. T.C. Prakashan was in receipt of show cause notices dt. 26.02.2009, 11.05.2009 and 07.08.2009. Since he failed to reply any of the show cause notice a charge memo was issued by Disciplinary Authority. When the enquiry was ordered, Shri. T.C. Prakashan vide his letter dt.10.09.2009 informed the management that he will henceforth attend the work regularly. The Enquiry Officer started the enquiry on 26.09.2009. Shri. T.C. Prakashan attended the enquiry. The management was represented by Shri.R. Raveendran. Documents M1 to M3 were marked on the side of the management and the enquiry was adjourned to 13.10.2009 for further evidence. On 13.10.2009 Shri. T.C. Prakashan examined himself as WW1. He did not produce any document. The enquiry was further adjourned to 24.10.2009 for cross examine WW1. The management representative did not cross examine the workman. The workman informed the enquiry that he is not proposing any further evidence.

18. Shri.K. Muraleedharan was issued memos on 11.05.2009, 04.06.2009 and 07.08.2009. Since there was no reply from the workman the management initiated disciplinary action for unauthorised absence by issuing a charge sheet and appointing an Enquiry Officer. After the receipt of the communication appointing the Enquiry Officer the workman vide his letter dt.19.04.2010 admitted his charges of unauthorised absence and agreed that he will be regular in attending the office henceforth. The enquiry started on 26.09.2009. The enquiry was adjourned for 05.10.2009 for documents and evidence. On 05.10.2009 management evidence was taken. The enquiry was adjourned for cross examining the management witness. Shri.K. Muraleedharan did not attend the enquiry because of illness of his daughter. The enquiry was adjourned to 24.10.2009 and on that day Shri.K. Muraleedharan informed the enquiry that he is not cross examining the management witness. Shri.K. Muraleedharan himself gave evidence as WW1 and informed the enquiry that he could not attend his work as construction work of his house was going on and since he is having back pain. The workman did not produce any documentary evidence.

19. From the proceedings of the enquiry elaborated above, it can be seen that there was no request from the side of the workmen to engage a defence assistant. They were allowed to cross examine the management witness which they did not do. The management witness only introduced and marked the management documents in the enquiry. The workmen examined themselves as witness. The charges against both the workmen are prolonged unauthorised absence which is directly or indirectly admitted by them. The charges in both these cases can be proved through documentary evidence.

20. From the details of proceedings elaborated above, it is very clear that the Enquiry Officer followed the principles of natural justice, provided all opportunity to the workmen to cross examine the management witness and also to produce the defence evidence.

Hence I am inclined to hold that the enquiry is conducted in a fair and proper manner following principles of natural justice.

Hence the issue is answered in favour of the management and against the workmen.

21. **Issue no. 2 & 3**

The charges against both the workmen are of prolonged unauthorised absence. A charge of unauthorised absence can be adequately proved through documentary evidence. In the present case the management produced the Muster roll of both the workmen which clearly shows the unauthorised absence of the workmen. Further it is also seen from various memos issued to the workmen that the gravity of the offence was brought to the notice of the workmen at the appropriate time by the management. Those memos also form part of the exhibits produced in the enquiry. Though the workmen failed to reply to the memos they submitted a request before the management admitting the unauthorized absence and committing that they will be regular in the attendance thereafter. After going through the above documentary evidence available in the file there is no denying fact that the charges are adequately supported by the evidence.

22. The management on dt.20.07.2010 issued the order of dismissal in respect of both the workmen. However vide order dt.26.07.2010 the management decided to freeze the said order and allowed the workmen to continue in the service of the management mill on the condition that they should work atleast 22 days in a month thereafter. While the workmen were working on the strength of the above cited order, the management issued another order dt.17.09.2010 terminating the service of the workman with effect from 18.09.2010. According to the Counsel for the workman the management ought to have issued a show cause notice before issuing this final order. It may be true that the workmen violated the conditions as per the order dt.20.07.2010 by unauthorizely absenting by themselves further. However interest of justice demands that a show cause notice was issued to the workmen before such final orders are issued.

23. It is seen that the workman has put in long service with the management. There is no case on the side of the management that there were cases of unauthorised absence prior to the present incident. Though the explanation on the part of the workman for unauthorised absence cannot be accepted, the punishment of dismissal is excessive and disproportionate to the charges proved against the workman considering the long service rendered by the workman with the management. The fact remains, that the workman could not avail a second opportunity given by the management to improve their attendance with the management. However the management ought to have considered their service with them for long spell of time. Taking in to account the fact that the workman could not improve their attendance, it may not be proper to compel the management to take back the workmen in service. However they need to be compensated for the work rendered by them with the management.

24. In view of the facts and circumstances explained above, I am inclined to hold that the punishment imposed on the workmen is not proportional to the charges proved against them. Hence the punishment of dismissal is modified to that of discharge with all the consequential benefits.

25. Hence the reference is answered holding that the action of the management of M/s.Alagappa Textiles in terminating the services of K. Muraleedharan and T.C. Prakashan for the alleged and unauthorised absence is not justified. The dismissal of the workmen is modified to that of discharge with all consequential benefits.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 16th day of October, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	-	Nil
Witness for the Management	-	Nil
Exhibits for the workman	-	Nil

Exhibits for the Management :-

M1	- Enquiry File No.1
M-2	- Enquiry File No.2

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2116.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत संचार निगम लिमिटेड, अंबाला कैंट (हरियाणा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय - चंडीगढ़, के पंचाट (संदर्भ संख्या 137/2018, 134/2018, 132/2018, 130/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.11.2019 को प्राप्त हुए थे।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2116.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 137/2018, 134/2018, 132/2018, 130/2018) of the Central Government Industrial Tribunal-cum-Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Bharat Sanchar Nigam Ltd, Ambala Cantt (Haryana) & Others, and their workmen which were received by the Central Government on 26.11.2019.

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

1. ID No. 137/2018

Lakhwinder Singh, S/o Gurmit Singh, V.P.O. Panjokhera Sahib, Ambala City, Haryana-133201.

Registered on 13.04.2018

2. ID No. 134/2018

Shiv Kumar S/o Prem Pal Singh, 2833/1, Kaziwara, Ambala City, Haryana-134003.

Registered on 03.04.2018

3. ID No. 132/2018

Mukesh Kumar S/o Punjaba Ram, 1135/1, Kaith Majro, Ambala City, Haryana-134003.

Registered on 03.04.2018

4. ID No. 130/2018

Satish Kumar S/o Lallu Ram, # 936, Friends Colony, Model Town, Ambala City, Haryana-134003.

Registered on 03.04.2018

...Workmen

Versus

1. The Chief General Manager (T), BSNL, 107, Mall Road, Ambala Cantt-133001.
2. The Sub-Divisional Engineer (Phones), BSNL, Ambala City. ...Respondents

AWARD

Passed on:-01.11.2019

1. The facts and laws involved in all these cases are the same hence, the cases are decided by a common judgment, making leading case titled as ID No.137/2018 Lakhwinder Singh Vs. B.S.N.L.
2. The workmen have directly filed their separate claim petitions under Section 2-A of the Industrial Disputes Act, 1947 registered separate ID numbers as above, alleging therein that they had joined the services of the Sub-Divisional

Engineer(Phones), BSNL, Ambala City, in the month of January 2004 as helper and later on worked as Cable Jointer till the date of illegal termination from the services on 01.04.2017. The workmen were never given any weekly off and the management used to take work for 12 hours daily almost 30 days in the month. The record of the management showed working only of 20-21 days in a month. The actual rate of wages of workmen were Rs.11,000/- whereas the management used to show less wages on the record after deductions of EPF and ESI contributions. After the illegal termination, the workmen were forced to approach the office of Deputy Commissioner, Ambala, who marked the complaint to Assistant Labour Commissioner, Ambala. The workmen approached the management on the assurance before the Assistant Labour Commissioner, Ambala to pay the wages of the workmen and taken back on duty but they refused to take back on duty unless an unlawful written undertaking were given by them. The termination of the services of the workmen without complying the provisions of Section 25-F and 25-G of the I.D. Act is illegal and the workmen are entitled for reinstatement in service with continuity of service with all service benefits. The job still exists in the respondent-company till day and the juniors to the workmen have been retained in service in violation of Section 25-G of the Act. Hence, it is prayed that an award in respect of reinstatement with full back wages be passed along with 12% interest in favour of the workmen.

3. Management has filed its written statement, alleging therein that the workmen were not directly engaged by the management as the work of cable jointing for maintenance of underground cable was getting performed through outsource contractors. It is denied that workmen were engaged by BSNL initially as helper and terminated on 01.07.2017 as is alleged in the claim petition. The claimants/workmen have neither appended any letter of appointment nor have attached any letter of termination. There is no relation of workmen and management and the complaint have been filed just to harass the management. The management denied the remaining paras of the claim petition completely with assertion that no representative of the management appeared before the ALC Ambala to pay compensation to the workmen or agreed to take workmen on duty. The questions of violation of Section 25-F and 25-G are not attracted because the workmen were not the employees of the management and question of reinstatement is beyond scope through the claim petition. It is therefore prayed that the claim of the claimants/workmen be dismissed being devoid of merit. Management has filed photocopy of agreements entered into between the management and respective contractors.

4. During the pendency of the proceedings before this Tribunal, at the stage of evidence workmen Lakhwinder Singh, Shiv Kumar, Mukesh Kumar and Satish Kumar made their respective statements that they do not press their claims and it be answered accordingly.

5. Tribunal recorded the statements of the claimants/workmen, close the opportunity of the management to submit reply or evidence as any purpose is not going to be served in the light of the statements of the workmen that they are not interested in contesting the case. Thus, it became the case of no evidence. In view of the statements made by the workmen, these cases are dismissed as withdrawn. Since there is no adjudication of the case on merits as such, it would not preclude the workmen from filing fresh case in accordance with Law. File after completion be consigned in the record room.

5. Copy of the order be kept in ID No.134/2018 titled as Shiv Kumar S/o Prem Pal Singh, ID No.132/2018 titled as Mukesh Kumar S/o Punjaba Ram, ID No.130/2018 titled as Satish Kumar S/o Lallu Ram Vs. Bharat Sanchar Nigam Limited.

6. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2117.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स जवाहरलाल नेहरू स्टेडियम , नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय -1 नई दिल्ली के पंचाट (संदर्भ संख्या 173/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/11/2019 को प्राप्त हुए थे।

[सं. एल-42011/107/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2117.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 173/2016) of the Central Government Industrial Tribunal-cum-Labour Court- 1 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Jawaharlal Nehru Stadium, New Delhi & Others, and their workmen which were received by the Central Government on 05.11.2019.

[No. L-42011/107/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

**IN THE COURT OF MS.PRANITA MOHANTY, PRESIDING OFFICER: CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM No. 207, ROUSE AVENUE COURT
COMPLEX, DELHI – 110075**

ID No.173/2016

Smt. Sabita W/o Shri Rajesh,
House No.14/117, Dakshinpuri,
New Delhi – 110 062

C/o 170, Bal Mukund Khand,
Giri Nagar,
Kalkaji,
New Delhi – 110 019

...Workman

Versus

- (i) Jawaharlal Nehru Stadium,
Delhi Bhishmapitamah Marg,
Pragati Vihar, Lodhi Colony,
New Delhi – 110 003
- (ii) M/s B.P.M.V. Business Solution Pvt. Ltd.,
T.A 01, Basement Okhla Road,
Tuglakabad Extension,
New Delhi – 110 019

...Managements

AWARD

A reference under clause (d) of sub-section (1) and sub section (2-A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No.L-42011/107/2016-IR(DU) dated 23.11.2016/02.12.2016 for adjudication of an industrial dispute with the following terms:

“Whether the action of the management in denying wages to workman from 01.12.2015 to 31.03.2016 the period denying which she was alleged removed for service without notice is justified or not? What relief workman is entitled to?”

2. Claim statement was filed on behalf of Ms.Sabita (in short the workman) averring therein that she was working as Safai Karamchari with the above organization (in short the management) from 14.12.2012 onwards and her last drawn wages was Rs.7,000.00. The workman worked to the entire satisfaction of the management and never gave any chance of complaint. The management flouted implementation of labour laws as she was denied issuance of leave book, attendance card, salary slip, yearly leaves, minimum wages, increments, overtime etc. The above facilities were demanded by the workman, which irked the management and the management started paying her wages through vouchers. On objecting to the same, she was threatened to be thrown out of the job. Finally services of the workman was suddenly terminated on 01.12.2015 without assigning any reason/service of charge sheet in an illegal manner in violation of provisions of Section 25-F of the Act. The workman has also not been paid wages for the period 01.11.2015 to 30.11.2015. Demand notice was served on the management on 16.12.2015 by registered post for payment of her wages/bonus due, retrenchment compensation and reinstatement in service. However, management did not respond to the demand notice. The workman is out of employment since the date of her termination. Finally it has been prayed that the workman may be reinstated in service with full back wages and other cascading benefits.

3. Written statement was filed by M/s B.P.M.V. Business Solution Pvt. Ltd., wherein various preliminary objection inter alia the claim not being maintainable under the law, claim being misconceived as she had received her full land final wages alongwith EPF, NSIC, Notice Period, Bonus, leave and other statutory payments. The management had denied the other material averments contained in the statement of claim.

4. Despite affording various opportunities, none appeared on behalf of Jawahar Lal Nehru University, hence were proceeded ex-parte on 08.09.2017.

5. Rejoinder was filed by the claimant to the written statement filed by M/s B.P.M.V. Business Solution Pvt. Ltd. wherein the facts contained in the claim statement were reiterated and the averments contained in the written statement were denied.

6. Based on the pleadings of the parties, following issues were settled vide order dated 12.03.2018:

- (i) Whether the claim filed by the claimant is not legally maintainable in view of the preliminary objections?
- (ii) In terms of reference
- (iii) Relief

7. Thereafter, the case was listed on 07.05.2018 for evidence of the claimant. However, the claimant failed to appear before this Tribunal. Thus, it is apparent that the claimant is no more interested in pursuing her case on merits. Under such circumstances, this Tribunal is left with no other alternative except to pass a 'No claim' award. However, it is made clear that there is no adjudication of the case on merits, as such, the claimant is still at liberty to agitate her cause in accordance with law. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

PRANITA MOHANTY, Presiding Officer

Dated : October 24, 2019

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2118.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बंगाल केमिकल्स एंड फार्मास्यूटिकल्स लिमिटेड कोलकाता और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,- कोलकाता के पंचाट (संदर्भ संख्या 28/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.11.2019 को प्राप्त हुए थे।

[सं. एल-42011/163/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2118.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2014) of the Central Government Industrial Tribunal-cum-Labour Court- Kolkata , as shown in the Annexure, in the Industrial dispute between the employers in relation to The Bengal Chemicals & Pharmaceuticals Ltd. Kolkata & Others, and their workmen which were received by the Central Government on 28.11.2019.

[No. L-42011/163/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 28 of 2014

Parties: Employers in relation to the management of Bengal Chemicals & Pharmaceuticals Ltd.

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

State: West Bengal.

Industry: Bengal Chemicals

Dated: 19th November, 2019

AWARD

By Order No.L-42011/163/2013-IR(DU) dated 06.03.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Bengal Chemicals & Pharmaceuticals Limited in inflicting punishment to Sri Prabir Bose and Sri Dinesh Kurni (1) treating the period of suspension as such from 03.12.2008 to till date of joining (2) withholding the cumulative increment as ordered vide No.PH/272/PER I&II dated 21.05.2009 is legal and/or justified? If not, to what relief the workmen concerned are entitled to?"

2. After receipt of reference order, notices were issued to the respective parties in response to which the workmen concerned appeared before this Tribunal and filed their statement of claim, but nobody appeared for the management despite sufficient service of notice.

3. The statement of claim filed by the workmen concerned reveals that the workman Prabir Kumar Bose was working as Supervisor in Bengal Chemicals & Pharmaceuticals, Kolkata and Shri Dinesh Kurni was working as Operator. The workman, Prabir Kumar Bose and Dinesh Kurni were chargesheeted for willful insubordination of disobedience and riotous or disorderly behavior during working hours in the factory premises or any act subversive of discipline. They were given opportunity to make representation against the charges framed. In their representation they denied the charges and participated in enquiry. After conclusion of enquiry, Enquiry Officer submitted his enquiry report against which the workmen were asked to make representation. The disciplinary authority came to the conclusion that they committed misconduct, therefore, imposed the punishment of withholding one increment with cumulative effect and also that the period of suspension to be treated as no duty. Dispute was raised before the conciliation officer on failure of which the failure report was submitted to the Central Government.

4. As nobody appeared on behalf of the management, the case proceeded *ex parte* and *ex parte* evidence was taken by the Tribunal.

5. I have heard the workmen concerned.

6. From the perusal of the order of reference it appears that though the present dispute has been espoused by the union, Bengal Chemical Mazdoor Union, Ichapur, Maniktala, Pin – 743144, but there is nothing either in statement of claim or in examination-in-chief filed by the workmen concerned that they are member of the above union. The statement of claim has also been filed by the workmen concerned in their individual capacity. Thus the union cannot have locus to espouse the case of the workmen concerned in absence of membership.

7. However, treating that the dispute is an industrial dispute for the sake of argument, it is to be examined whether the punishment in question have been imposed after a valid departmental enquiry by the employer. In **Sur Enamel & Stamping Works v. their workmen**, reported in AIR 1963 SC 1914 The Hon'ble Supreme Court has held than an enquiry cannot be said to be properly held unless -

- (1) The employee proceeded against has been informed clearly of the charges leveled against him;
- (2) The witnesses are examined ordinarily in the presence of the employee in respect of the charges;
- (3) The employee is given fair opportunity to cross-examine witnesses;
- (4) The employee is given a fair opportunity to examine witnesses including himself in his defence, if he so wishes; and
- (5) The Enquiry Officer records his findings with reasons for the same in his report.

8. In the present case the workmen concerned have not denied receipt of copy of chargesheet. They have also not denied that opportunity was given to file representation against the charges framed. In the statement of claim it is alleged that the complainant did not produce any evidence to prove his statement regarding infliction of injuries in his body. Statement of prosecution witnesses is alleged to be afterthought. The evidence of prosecution witness does not support prosecution case. The workmen concerned were not allowed to cross-examine the management witness and also not

allowed to produce their own witness. But, from the perusal of enquiry proceedings it is revealed that the management witnesses have been cross-examined by the delinquents and they were also allowed to adduce evidence in defence and, in fact, they examined DW-01, Prabir Kumar Bose the workman himself. Hence, there is no substance in the submission of the workmen concerned that they were not allowed to cross-examine the management witnesses and to give evidence in defence.

9. It is further alleged that the evidence adduced by the management was not sufficient to support the prosecution version, but the question of sufficiency of evidence cannot be examined by this Tribunal. The Tribunal can interfere in the enquiry only when the findings of the Enquiry Officer are perverse. A finding can be said to be perverse when it is passed on no evidence or on some extraneous material, but there is no allegation of the workmen concerned that the findings of the Enquiry Officer were based on extraneous material. The enquiry proceedings go to show that on behalf of management Shri Pranabananda Chakraborty, Shri Shankar Majumder and Shri Amrendra Rakshit were examined. They have proved the charges against the workmen concerned. There is no substance in the argument of the workmen concerned that the statement of above witnesses do not support the prosecution version or that infliction of injuries was not proved. It was not necessary for the presenting officer to prove injuries as there was no charge against the workmen concerned for infliction of injuries. Charges had been framed against the workmen concerned regarding insubordination or disobedience to the order of the superior and riotous or disorderly behavior during working hours at the premises of the factory. The witnesses of the management had sufficiently proved insubordination to the order of the superior and acts subversive of discipline. They have stated that when Shri Shankar Majumder and Shri Amrendra Rakshit came to meeting hall, the workmen concerned along with others pushed them and obstructed their entry into meeting hall. Shri Shankar Majumder specifically named the workmen concerned workmen to have physically misbehaved with him and that Shri Prabir Kumar Bose held him by the neck and pushed him against the wall. Thus, in view of above, it cannot be said that the finding of the Enquiry Officer is perverse. There is nothing on record to show that the enquiry conducted by the Enquiry Officer is illegal or not valid.

10. In Management of State Bank of India v. Industrial Tribunal No.1, 2006(1) ALT 39 it has been held that Section 11-A of the Industrial Disputes Act, 1947 relates only to cases of discharge or dismissal of workman, in cases where a penalty other than dismissal or discharge is imposed, provision of Section 11-A of the Act are not applicable. The Tribunal cannot interfere in the managerial function of imposing punishment, unless the findings given by the Enquiry Officer is perverse or the punishment is so harsh to lead inference of victimization or unfair labour practice. As it has been seen above, the findings given by the Enquiry Officer are not perverse and the punishment given to the workmen concerned is only that of stoppage of one increment with cumulative effect which leads to no inference of either victimization or unfair labour practice. Therefore, no interference by this Tribunal in the above punishment is warranted and the workmen concerned are not entitled to any relief.

11. Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 19th November, 2019

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2119.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय राष्ट्रीय राजमार्ग प्राधिकरण कोलकाता और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुवंश में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 07/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.11.2019 को प्राप्त हुए थे।

[सं. एल-42011/213/2018-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2119.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2019) of the Central Government Industrial Tribunal-cum-Labour Court- Kolkata, as shown in the Annexure, in the Industrial dispute between the employers in relation to The National Highways Authority of India Kolkata & Others, and their workmen which were received by the Central Government on 25.11.2019.

[No. L-42011/213/2018-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 07 of 2019

Parties: Employers in relation to the management of National Highways Authority of India

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : Mr. S. Bhattacharjee, learned counsel

State: West Bengal.

Industry: National Highways.

Dated: 14th November, 2019.

AWARD

By Order No.L-42011/213/2018-IR(DU) dated 15.02.2019 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

Whether Shri Bijal Kumar Maity, Sh. Bikash Dhara, Sh. Nitya Midya, Sh. Avijit Mal, Sh. Nilkanto Bera, Sh. Dipanjan Maity and Sh. Laltu Sharma are workmen under the Industrial Disputes Acxt, 1947? If yes, whether their claim of illegal termination w.e.f. April 2017 by the management of M/s. Dinesh Chandra Aagarwal Infrastructure Ltd., principal employer NHAI is just and legal? If so, what relief the workmen are entitled to and to what extent?"

2. In this case union had filed an application to the effect that the order of reference made on 15th February, 2019 has already been set aside by the Hon'ble Calcutta High Court. The union had also annexed server copy of the order of the Hon'ble High Court along with copy of writ petition on which he was directed to file certified copy of the order. Today the learned counsel for the union has filed certified copy of the order dated 29.07.2019 passed by the Hon'ble Calcutta High Court in W.P. 13043 (W) of 2019.

3. From the perusal of the order passed by the Hon'ble High Court it is revealed that the order of reference made by the Deputy Director on 15th February, 2019 is set aside and the authority is directed to make a fresh reference only after receipt of amended failure of conciliation report from the Assistant Labour Commissioner.

4. In the above circumstances, present reference is set aside as per order dated 15th February, 2019 of the Hon'ble Calcutta High Court.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 14th November, 2019

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2120.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ईएसआईसी डिस्पेंसरी, जंगपुरा एक्सटेंशन, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय,- 2 नई दिल्ली के पंचाट (संदर्भ संख्या 15/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/11/2019 को प्राप्त हुए थे।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2120.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2018) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The ESIC Dispensary, Jangpura Extension, New Delhi & Others, and their workmen which were received by the Central Government on 22.11.2019.

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2 NEW DELHI

Present : Ms.Pranita Mohanty, Presiding Officer

ID No. 15/2018

Shri Ram Das,
S/o late Shri Mahadev Singh,
R/o House No.G-42, Jangpura Extension,
New Delhi – 110 014

Through

All India General Mazdoor Trade Union,
170, Balmumund Khand, Giri Nagar,
Kalkaji, New Delhi 110 019

...Claimant

Versus

(i) M/s. ESIC Dispensary,
Jangpura Extension,
Near Haqiqat Rai Park,
New Delhi 110 014

(ii) M/s. 3220/Atul Bali Security Agency,
Shop No.1, Flat No.187, Gali No.4,
Deep Enclave Part – III,
Vikas Nagar Extension,
Uttam Nagar, New Delhi 110 059

...Managements

AWARD

Present dispute has been raised by Shri Ram Das (in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Workman has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of his service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. Claim statement was filed by the claimant herein averring therein that he was engaged as Security Guard through M/s 3220/Atul Bali Security Agency, (in short the contractor) to work in the premises of ESIC Dispensary (in short the management) in June 2016 on a monthly wages of Rs.22,802.00 and worked upto 29.08.2017. During the tenure of his service, he worked to the optimum satisfaction of the management/contractor and gave them no chance of complaint. Claimant pleads that the management/contractor have deprived him of legal facilities, viz. constitutional rights, appointment letter, yearly earned leave, bonus, attendance card, bonus, leave card, salary slip, increments, overtime, ESI card etc. EPF amount of Rs.525.00 was deducted from his salary every month but no UN number was given to him. The claimant requested the management for the above legal facilities, which demand irked the management who threatened the claimant with dire consequences. The claimant was made to work for 30/31 days a month but was being paid only for 26 days. The claimant was deprived of wages for the period 01.06.2017 to 28.08.2017. The claimant was made to sign on various plain paper/vouchers/Register etc. on the pretext of payment of the wages due to him. When protested, the claimant was not allowed to join duties, without assigning any reason or notice. He was directed to submit his resignation letter and on his refusal, he was terminated from service on 28.08.2017

depriving him of his earned wages. No memo or charge sheet was served on him. No notice or notice pay was given to the claimant before his termination. Demand notice was served on the management on 04.09.2017, which remained unresponded by the management/contractor. The claimant is unemployed since the date of his termination and is dependent on his relatives. Finally, claimant has prays for reinstatement in service full back wages and all consequential benefits.

3. Though notice was served, management did not appear nor filed written statement. Proceedings suffered adjournments on 18.07.2018, 26.09.2018, 05.12.2018 and 22.01.2019. As none appeared on behalf of either the management or the contractor, the Tribunal proceeded ex-parte against them on 22.01.2019. Thereafter, ex-parte evidence of the claimant was recorded on 04.04.2019. The claimant filed his affidavit Ex.WW1/A and he relied on documents Ex.WW1/1 to Ex.WW1/9.

4. Arguments were advanced at the bar by Shri Vinod Kumar, A/R for the claimant.

5. There is no dispute that the claimant was working in the premises of management and it was the contractor who had engaged the claimant to do the work of Security Guard.

6. It is also appropriate to refer to the affidavit of the claimant, Shri Ram Das, marked as Ex.WW1/A. The copy of his statement of account marked as Ex.WW1/9, clearly shows that he used to be paid wages by the contractor. As per case of the claimant, management No.1 had not directly engaged him and it was only management No.2 who had hired services of the claimant and they were making payment of salary to the claimant.

7. It is appropriate to mention here that the contractor was given various opportunities but none appeared on his behalf initially. In spite of service of fresh notice, none appeared on his behalf, as a result of which, on 07.11.2013 management as well as contractor was finally proceeded ex-parte. The contractor has neither filed any reply nor the contractor appeared before this Tribunal so as to explain the manner in which services of the claimant herein was terminated. It is clear from the evidence adduced by the claimant that his services were terminated in an illegal manner. Admittedly, there is nothing on record to suggest that any notice under Section 25F of the Act or one month's salary in lieu thereof was paid to the claimant before ordering his termination. Neither the claimant nor the management No.1, Indian Oil Corporation Ltd. have taken any steps to file on record copy of contract so as to show the terms or duration of the contract. It was, in fact, incumbent upon the principal employer, Indian Oil Corporation.

8. Now, the vital question is as to what relief the claimant is entitled. There is no evidence on record to suggest that he was gainfully employed or was doing any work after his termination. As a sequel to the discussions made hereinabove, it is held that termination of the claimant by the contractor Management No.2 is illegal and in violation of provisions of the Act. This Tribunal is, thus, of the opinion that the claimant is entitled to reinstatement and entitled to full back wages. But, on behalf of the claimant, no evidence has been laid to make the Tribunal believe that the post on which the claimant was working is still vacant and in his place, management No.2, the contractor has engaged other persons. That being the state of evidence, the Tribunal feels it proper to give a direction for compensation to be paid to the workman for his illegal termination instead of directing his reinstatement, which is not the thumb-rule in all cases of termination. Hence ordered.

ORDER

9. The claim be and the same is allowed in favour of the workman. The management is directed to pay Rs.30,000.00 as compensation to the claimant within two months from the date when the award would become enforceable, failing which the amount shall carry interest @9% per annum from the date of accrual till the final payment is made. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

PRANITA MOHANTY , Presiding Officer

Dated : September 26, 2019

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एन.बी.सी.सी., नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,- 2 नई दिल्ली के पंचाट (संदर्भ संख्या 07/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.11.2019 को प्राप्त हुए थे।

[सं. एल-42025/03/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2121.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2017) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The N.B. C. C , New Delhi & Others, and their workmen which were received by the Central Government on 22.11.2019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, NEW DELHI

ID No. 07/2017

Sh. Rajender Singh

V/s

N.B.C.C

24.10.2019

The record has been put up today for hearing of the petition filed by the claimant invoking the jurisdiction of the tribunal under Rule 28 of the Industrial Dispute (Central) Rule 1957 praying therein that an award has been passed by this tribunal infavour of the workman directing the management No.1 for reinstatement into service alongwith 20% back wage without interest. But in the body of the award due to inadvertence his monthly last drawn salary has been mentioned as 9,701/- which should have been 19701/. Unless this clerical and arithmetical error would be corrected serious prejudice shall be caused to him.

Perusal of the record shows that the claimant in his claim statement as well as in his affidavit evidence has categorically stated about his last drawn monthly salary as 19701/. A mistake has occurred in the preparation of the award. Rule 28 of the Industrial Dispute (Central) Rule 1957 empowers the tribunal to correct any clerical mistake or error arising from an accidental slip or omission in the award. Considering the circumstances of this matter this tribunal feels it proper to exercise the jurisdiction for correction of the error on the face of the award. Accordingly it is directed that the monthly last drawn salary of the claimant mentioned in page 2,1st line of the award be corrected as 19701/- instead of 9071/. All other things remaining unchanged a corrected award be sent to the Appropriate Government for publication of a corrigendum of the award. The correction as indicated above shall be carried out in the original award in the record in read mentioning the date of the order for future reference.

Sd./-

Presiding Officer

24.10.2019

नई दिल्ली, 28 नवम्बर, 2019

का.आ. 2122.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एन एसआईसी ओखला औद्योगिक एस्टेट, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,- 2 नई दिल्ली के पंचाट (संदर्भ संख्या 11/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.11.2019 को प्राप्त हुए थे।

[सं. एल-42011/155/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 28th November, 2019

S.O. 2122.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2017) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The NSIC Okhla Industrial Estate, New Delhi.& Others, and their workmen which were received by the Central Government on 22.11.2019.

[No. L-42011/155/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR-COURT No. 2: NEW DELHI**

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No. 11/2017

Date of Passing Award : 16th October, 2019

Shri Raj Dubey @ Raj Kumar Dubey,
S/o Shri Satya Prakash Dubey,
R/o. Village Jarun Katra, Jarua, Agra (UP) 283012....
Through Rastriya Trade Employees Congress
Affiliated to
Bhartiya Mazdoor Sangh,
52-C, Okha Estate, Phase-III,
New Delhi 110020

...Workmen/Claimant

Versus

1. NSIC Okhla Industrial Estate,
Phase-III, New Delhi 1100209.
2. RITES Ltd.
Through Shri S.K. Kapoor,
(Addl. General Manager),
RITES Bhawan, Plot No.1,
Sector 29, Gurgaon,
Haryana 122001.
3. IVRCL Ltd.
M-22/3, RT, Vijay Nagar Colony,
Hyderabad 500057.
4. Agni Safety (I) Pvt.Ltd.
Block A-2B, Flat No.56-C, Ekta Apartment,
Paschim Vihar, New Delhi 110063.

...Managements/Respondents

Appearances :-

None : For the Workman

None : For the Management

AWARD

This Award shall decide a reference which was made to this Tribunal by the appropriate Government vide letter No.L-42011/155/2016-IR(DU) dated 06.4.2017 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short “the Act”) for adjudication of an industrial dispute, terms of which are as under:

‘Whether the workman i.e. Shri Raj Dubey s/o. Shri Satya Prakash Dubey has been terminated by the management of M/s Agni Safety (I) Pvt. Ltd. which was executing the work in the NSIC premises under the main contract of M/s RITES Ltd. and M/s IVRCL Ltd. and the sub-contract of M/s. IVRCL Ltd. and M/s. Agni Safety (I) Pvt.Ltd. If yes, what relief is he entitled to and what directions are necessary in this respect ?’

2. Both parties were put to notice and the claimant/ workman filed statement of claim, with the averments inter alia that he was appointed as Electrician by the Management N.4, without issuance of any appointment letter. His last drawn salary was Rs.7000/- per month. He worked very honestly and diligently. He performed his duties to the entire satisfaction of the Management No.4 and gave no chance of any complaint. The workman was deprived of legal facilities excepting ESI facility. He was being paid wages less than the Minimum Wages prescribed by the Government.

When the workman started demanding the legal facilities, the Management No.4 paid no heed towards his demands but got annoyed & started harassing him without any reason. Ultimately his services were illegally terminated on 20/8/2015 without any information and without giving him notice, charge sheet or retrenchment compensation. The Management has terminated the workman in violation of the provisions of Section 25-F,G & H of the Act. The workman was not paid salary for four months i.e. from May to August, 2015. The workman sent demand notice to the Management through speed post but to no response. Thereafter he approached the Conciliation Officer but to no avail. However, Management No.3 paid him a sum of Rs.22048/- to the workman before the Conciliation officer on 23/5/2016. The workman has prayed for reinstatement into service with full back wages and continuity of service.

3. Managements No.1 to 4 opted not to participate in the proceedings despite service of notice. Therefore, the matter was proceeded ex parte against them vide order dated 17/1/2019.

4- Perusal of the record shows that the claimant was afforded opportunities to adduce evidence in support of his case. Despite number of opportunities granted to the workman/claimant to adduce evidence so as to prove his case about his engagement/employment with the Management No.4 & illegal termination of his services, he did not lead any evidence.

5- Onus was upon the claimant to prove that he worked under the Management No.4 and that his services were illegally terminated by the Management. It is a matter of record that neither the claimant nor his authorised representative caused appearance before the Tribunal from 26/3/2019 onwards despite the fact that matter was adjourned time and again and ultimately this Tribunal was constrained to reserve the matter for passing the award.

6- In view of the fact that the claimant has not led any evidence in support of his case, this Tribunal is constrained to pass "No Dispute Award" in the matter. Since the matter has not been decided on merits, there will be no bar for the claimant to file afresh claim petition in accordance with law for adjudication of the controversy in issue or to seek any other relief to which the claimant is otherwise entitled to. Award is passed accordingly.

PRANITA MOHANTY Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2019

का.आ. 2123.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 1281/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.12.2019 प्राप्त हुआ था।

[सं. एल-12012/74/99-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 3rd December, 2019

S.O. 2123.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1281/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03.12.2019.

[No. L-12012/74/99- IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present : Radha Mohan Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad,

Dated 20th November, 2019

Reference: (CGITA) No. 1281/2004

1. The General Manager,
State Bank of India,
7th Floor, Bhadra, Lal Darwaja,
Ahmedabad – 380001

2. The Regional Manager,
State Bank of India,
Region III, Zonal Office, 7th Floor, Paradise Complex,
Baroda – 390005

3. The Manager,
State Bank of India,
Vyara Branch
Surat – 394560

...First Parties

V/s

Shri Arjunbhai F. Gamit,
Bhatpore, Post Paniyari, Vyara,
Surat (Gujarat) – 395001

...Second Party

For the First Parties : Shri D.C. Gandhi
For the Second Party : Shri P.F. Baxi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/74/99-IR (B-I) dated 16.06.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDEULE

“Whether the concerned workman Shri Arjunbhai F. Gamit has put in continuous service in the bank as per provisions of Section 25-B?” and

“Whether the action of the management of State Bank of India through its officers in terminating/discontinuing the services of workman Shri Arjunbhai F. Gamit w.e.f. 30.09.1998 on/with the plea of abolition/cancellation of the waiting list of temporary employees is legal, proper and justified? If not, to what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 16.06.1999 and received from Ministry of Labour and Employment, New Delhi on 05.07.1999 for adjudication and passing the award.

2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 10 on 03.07.2000 and the first party submitted the written statement Ex. 11 on 25.02.2002. The case was listed for evidence of second party.

3. Today on 20.11.2019, the second party workman Arjunbhai F. Gamit and the first party State Bank of India, Surat and others submitted an settlement Ex. 32 stating that the matter has been resolved by way of onetime payment of Rs.200000/- (Rupees Two Lac) in the favour of second party workman Arjunbhai F. Gamit vide Demand Draft No. 605326 dated 10.10.2019 along with Rs.15000/- (Rupees Fifteen Thousand) in the favour of Shri P.F. Baxi, advocate of second party vide Demand Draft No. 605329 dated 10.10.2019 and nothing has been left for further resolution. The said settlement Ex. 32 is read over and explained to the parties. They admitted the terms and conditions of the settlement. Therefore, the settlement Ex. 32 is accepted by the Tribunal.

4. Thus the reference is disposed of in the light of the settlement Ex. 32. The settlement Ex. 32 shall remain the part of the award.

5. The award is passed accordingly.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2019

का.आ. 2124.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 1267/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.12.2019 प्राप्त हुआ था।

[सं. एल-12012/595/98-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 3rd December, 2019

S.O. 2124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1267/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03.12.2019.

[No. L-12012/595/98-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Radha Mohan Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad,

Dated 20th November, 2019

Reference: (CGITA) No. 1267/2004

1. The General Manager,
State Bank of India,
7th Floor, Bhadra, Lal Darwaja,
Ahmedabad – 380001

2. The Regional Manager,
State Bank of India,
Region III, Zonal Office, 7th Floor, Paradise Complex,
Baroda – 390005

3. The Manager,
State Bank of India,
Udhna Udyognagar, P.B. No. 1,
Surat – 394210

...First Parties

V/s

Smt. Monaben (Legal Heir),
W/o Late Harish Rameshbhai Rathod,
Harinagar -3, R. No. 524, RBI Colony,
Opp. BRC Gate, Udhna,
Surat (Gujarat) – 395003

...Second Party

For the First Parties : Shri A.B. Gogia

For the Second Party : Shri P.F. Baxi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/595/98-IR (B-I) dated 30.03.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDELE

“Whether the concerned workman Shri Harish Rameshbhai Rathod has put in continuous service in the bank as per provisions of Section 25-B?” and

“Whether the action of the management of State Bank of India through its officers in terminating/discontinuing the services of workman Shri Harish Rameshbhai Rathod w.e.f. 31.01.1997 on/with the plea of abolition/cancellation of the waiting list of temporary employees is legal, proper and justified? If not, to what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 30.03.1999 and received from Ministry of Labour and Employment, New Delhi on 05.04.1999 for adjudication and passing the award.
2. After issuing notice to the parties, the second party submitted the statement of claim and the first party submitted the written statement. The case was listed for evidence of second party.
3. Today on 20.11.2019, Smt. Monaben, legal heirs of deceased second party workman Harish Rameshbhai Rathod and the first party State Bank of India, Surat and others submitted an settlement Ex. 27 stating that the matter has been resolved by way of onetime payment of Rs.200000/- (Rupees Two Lac) in the favour of Smt. Monaben, legal heirs of deceased second party workman Harish Rameshbhai Rathod vide Demand Draft No. 637478 dated 15.10.2019 along with Rs.15000/- (Rupees Fifteen Thousand) in the favour of Shri P.F. Baxi, advocate of second party vide Demand Draft No. 637477 dated 15.10.2019 and nothing has been left for further resolution. The said settlement Ex. 27 is read over and explained to the parties. They admitted the terms and conditions of the settlement. Therefore, the settlement Ex. 27 is accepted by the Tribunal.
4. Thus the reference is disposed of in the light of the settlement Ex. 27. The settlement Ex. 27 shall remain the part of the award.
5. The award is passed accordingly.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2019

का.आ. 2125.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 1262/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.12.2019 प्राप्त हुआ था।

[सं. एल-12012/382/98-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 3rd December, 2019

S.O. 2125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1262/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03.12.2019.

[No. L-12012/382/98--IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
AHMEDABAD**

Present : Radha Mohan Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad

Dated 20th November, 2019

Reference: (CGITA) No. 1262/2004

- 1. The General Manager,
State Bank of India,
7th Floor, Bhadra, Lal Darwaja,
Ahmedabad – 380001
- 2. The Regional Manager,
State Bank of India,
Region III, Zonal Office, 7th Floor, Paradise Complex,
Baroda – 394220
- 3. The Manager,
State Bank of India,
Salabatpura Branch,
Surat – 395003

...First Parties

V/s

Smt. Kusumben D. Kalgude (Legal Heir),
W/o Late Mr. Dattaram Shankar Kalgude,
Room No. 4, Chamdia ki Chawl,
Near Bombay Gate, Navsari Bazar,
Surat (Gujarat)

... Second Party

For the First Parties	: Shri A.B. Gogia
For the Second Party	: Shri P.F. Baxi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/382/98-IR (B-I) dated 10.03.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the concerned workman Shri Dattaram Shankar Kalghude has put in continuous service in the bank as per provisions of Section 25-B?” and

“Whether the action of the management of State Bank of India through its officers in terminating/discontinuing the services of workman Shri Dattaram Shankar Kalghude w.e.f. 28.02.1998 on/with the plea of abolition/cancellation of the waiting list of temporary employees is legal, proper and justified? If not, to what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 10.03.1999 and received from Ministry of Labour and Employment, New Delhi on 18.03.1999 for adjudication and passing the award.
2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 10 on 03.07.2000 and the first party submitted the written statement Ex. 11 on 08.04.2002. The case was listed for evidence of second party.
3. Today on 20.11.2019, Smt. Kusumben D. Kalgude, legal heirs of deceased second party workman Dattaram Shankar Kalghude and the first party State Bank of India, Surat and others submitted an settlement Ex. 37 stating that the matter has been resolved by way of onetime payment of Rs.200000/- (Rupees Two Lac) in the favour of Smt. Kusumben D. Kalgude, legal heirs of deceased second party workman Dattaram Shankar Kalghude vide Demand Draft No. 32990 dated 15.10.2019 along with Rs.15000/- (Rupees Fifteen Thousand) in the favour of Shri P.F. Baxi, advocate of second party vide Demand Draft No. 329910 dated 15.10.2019 and nothing has been left for further resolution. The said

settlement Ex. 37 is read over and explained to the parties. They admitted the terms and conditions of the settlement. Therefore, the settlement Ex. 37 is accepted by the Tribunal.

4. Thus the reference is disposed of in the light of the settlement Ex. 37. The settlement Ex. 37 shall remain the part of the award.

5. The award is passed accordingly.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2019

का.आ. 2126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 मुम्बई के पचाट (संदर्भ संख्या 53/2017) को प्रकापित करती है, जो केन्द्रीय सरकार को 03.12.2019 प्राप्त हुआ था।

[सं. एल-41012/35/2016-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 3rd December, 2019

S.O. 2126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03.12.2019.

[No. L-41012/35/2016- IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/53 of 2017

EMPLOYERS IN RELATION TO THE MANAGEMENT OF STATE BANK OF INDIA

Asstt. General Manager,
State Bank of India,
Jeevan Tara B Wing, 513, Sadar Bazar,
Opp. Collector Officer, Satara Koregaon Road,
Satara – 415 001.

AND THEIR WORKMEN

Shri R.S. Bhakade,
157 Shaniwar Peth, Near Head Post Office,
Karad, Tal Karad,
Satara -

APPEARANCES:

FOR THE EMPLOYER Advocate : Mr. S. Alva

FOR THE WORKMEN : Absent

Mumbai, dated the 03rd October, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-41012/35/2016 – IR (B-1) dated 04.12.2017. The terms of reference given in the schedule are as follows :

“Whether the action of the management of Asstt. General Manager, (Admn) State Bank of India, Pune in terminating the services of Shri S. Bhakade w.e.f. 29.09.2010 is legal and justified ? If not, to what relief the workman is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices.
3. The concerned workman is absent since long. He has not filed statement of claim to substantiate his claim.
4. The reference is liable to be rejected for want of evidence. Hence Order.

ORDER

Reference is rejected with no order as to costs for want of evidence.

Date: 03.10.2019

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2019

का.आ. 2127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 मुम्बई के पंचाट (संदर्भ संख्या 5/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.12.2019 प्राप्त हुआ था।

[सं. एल-41011/21/2003-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 3rd December, 2019

S.O. 2127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 03.12.2019.

[No. L-41011/21/2003- IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/5 of 2004

EMPLOYERS IN RELATION TO THE MANAGEMENT OF WESTERN RAILWAY

The Divisional Rly Manager,
Western Railway,
Mumbai Division, Mumbai Central,
Mumbai – 4000 008.

AND

THEIR WORKMEN

The Divisional Secretary,
Paschim Rly Karm. Parishad,
Chapra Bldg., Near Plaza Cinema,
Dadar [West], Mumbai – 4000 028.

APPEARANCES:

FOR THE EMPLOYER : Mr. Abhay Kulkarni, Advocate

FOR THE WORKMEN : Mr. M. B. Anchan, Advocate

Mumbai, dated the 16th October, 2019.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour &

Employment, New Delhi vide its order No. L-41011/21/2003 – IR (B-I) dated 09.01.2004. The terms of reference given in the schedule are as follows :

“Whether the action of the management of Western Railway Administration, Mumbai in not extending the benefit to the disputed 15 employees is justified ? If not, what relief these 15 employees are entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices.
3. Read Ex.20. Union by filing pursis Ex.20 wants to dispose of the reference on the ground that workman got the promotions and therefore union is not pressing the above reference.
4. In view of this pursis, the reference is disposed of. Hence Order.

ORDER

Reference is disposed of with no order as to costs.

Date: 16.10.2019

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2019

का.आ. 2128.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 16/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.12.2019 को प्राप्त हुआ था।

[सं. एल-12011 / 78 / 201-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 3rd December, 2019

S.O. 2128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2012 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 03.12.2019.

[No. L-12011/78/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 26TH NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 16/2012

I Party

The Treasurer,
Vijaya Bank Employees Organisation,
37/1, Car Street, Halasuru,
Bangalore - 560 008.

II Party

The Chairman & Managing Director,
Bank of Baroda, Head Office,
41/2, MG Road, Trinity Circle,
BANGALORE - 560 001.

Appearance :

Authorised Representative for I Party : Mr. Suresh Kamath

Advocate for II Party : Mr. Udayashankar Rai

AWARD

The Central Government vide Order No. L-12011/78/2011-IR(B-II) dated 28.05.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Vijaya Bank, Head Office, Bangalore, Karnataka in imposing the punishment of removal from the services with superannuation benefits w.e.f. 26.11.2009 without disqualification from future employment upon Shri Balachandra V Kulkarni is legal and justified? What relief the aggrieved workman is entitled to?”

1. It is a dispute espoused by the Union pertaining to the former employee of the 2nd Party. The claim of the 1st Party is,

the 1st Party workman Sh. Balachandra V Kulkarni while working as a Clerk in the 2nd Party was issued charge sheet dated 05.01.2009; the workman denied the charges; not satisfied with his reply the 2nd Party held Departmental Enquiry; the Enquiry Officer submitted his findings by holding that the charges framed against the employer is proved. After affording opportunity of personal hearing the Disciplinary Authority vide its order dated 26.11.2009 imposed the punishment of ‘Removal from services of the Bank with superannuation benefits with immediate effect without disqualification from future employment’. The appeal preferred thereon did not survive.

2. The 1st Party challenged the enquiry proceedings as perverse and the punishment order as harsh. It is contended that the workman now is without any income to sustain himself and the family.

3. The 2nd Party contended that during the Domestic Enquiry he was given fair opportunity and also supported the findings of the Enquiry Officer as fair and proper and the proportionality of the punishment order as appropriate.

4. Both learned counsels have submitted their written arguments.

5. The gist of the allegation in the charge sheet dated 05.01.2009 was,

On 10.04.2008 the workman was the cashier at the Sangli Branch of the 2nd Party; cash of Rs. 10,00,000/- in denomination of Rs. 100/- was taken out from the safe and handed over to him in the morning; at 11.00 a.m Rs. 5,00,000/- was to be remitted to SBI to meet the adverse clearing position; the workman called the Cash Peon Sh. Sudarshan R Patil and handed over Rs. 5,00,000/- in the denomination of Rs. 100/- and asked him to affix Sangli Branch seal on all the bundles as they were bearing Karad Branch seal; when the Cash Peon returned the note bundles affixing the Sangli Branch seal on them, the workman asked him to keep the note bundles behind, without even seeing or counting the note bundles. Subsequently Sh. R.B. Satpute another Peon of the Branch was entrusted the duty of remitting cash to the SBI. Sh. R.B. Satpute came to the cash cabin, found the door of the cash cabin was open and 3 bundles of Rs. 100/- denomination amounting to Rs. 3,00,000/- was missing; the matter was reported to the Branch Manager. In spite of thorough search such cash could not be traced.

Hence, his charge of gross negligence causing serious loss to the Bank constituting gross misconduct under sub clause (j) of clause 5 of Memorandum of settlement dated 10.04.2002.

6. The workman in his reply denied the charges.

7. During the enquiry the management examined their Senior Manager and the Investigating Officer who investigated the matter. He produced his Investigation Report as MEX-2 along with list of the documents collected during the investigation and Annexures. His statement was in corroboration to the charge sheet allegation.

MW-2 was the then Branch Manager who had reported the incident to the Regional Inspectorate, Mumbai. He had stated to the effect that on the advice of the Regional Manager, RO Mumbai he gave oral complaint to the Police... the police made search in the Bank premises but the cash could not be traced. On 11.04.2008 MW-1 visited the Branch for preliminary investigation and a written complaint was lodged at that time. The CSE, Sh. Patil Peon and Mr. R. Satpute Peon came forward to make good the missing cash; CSE undertook to contribute Rs. 1.75 lakh and the other two paid Rs. 0.750 lakh and Rs. 0.50 lakh each. Pronote loans of the even amounts were sanctioned and disbursed to the said staff members and the missing cash was made good by passing necessary entries; the loan sanctioned to the staff members is recovered.

8. 1st Party gave his rebuttal evidence stating that Mr. Patil Cash Peon did not stay in the cash cabin till he counted the bundles; when Patil knocked the cash cabin CSE opened the door and sighed at him to wait since there was long cash queue; Patil just went out of the cabin; in a day he opens the cash cabin door 10 to 15 times on request; there is no sufficient space in the cash cabin; 10 bundles of Rs. 100/- denominations currency notes totalling Rs. 10,00,000/- cannot be kept in one or two drawers as other papers are kept there.

9. The Enquiry Officer in the body of his report brushed aside the defence which was brought out during the cross-examination evidence of the management witnesses and the evidence of the CSE. It was the defence that anybody could have access to the back side of the cash cabin through a passage by the side of the cash cabin and the cash bundles can be stolen from the dining table; the Cash Peon Sh. Patil might have returned only two bundles out of the five bundles handed over to him or while the three bundles were lying on the dining table someone might have stolen them; it was also his evidence that the Cash Peon did not wait till he counted the cash bundles despite insisting him to wait; the Enquiry Officer observed that the defence is self-contradictory, in his letter dated 18.06.2008 addressed to the Investigating Officer marked as MEX-2, he had stated to the effect that he asked the Cash Peon Sh. Patil to take Rs. 5,00,000/- cash for affixing Sangli Branch seal and after affixing the seal the Cash Peon came to his cabin and since he was busy attending the customers, he asked the Cash Peon to keep the cash, it was not seen and counted by him.

10. The Disciplinary Authority considered all the remarks of the 1st Party workman to the Enquiry Report viz a viz his defence and was convinced about the reasonableness of the findings arrived by the Enquiry Officer. His observation was, the defence was not substantiated with documentary proof; citing inadequate security measures, dearth of space for movement / pressure of work etc., were inferred as lame excuses just to cover the act of misconduct; the Disciplinary Authority vide its detailed order dated 26.11.2009 takes exception against the 1st Party workman for not establishing that previously he had brought to the notice of the management about inadequate security measures and space and agreed with the enquiry findings and imposed the punishment.

11. The Appellate Authority in the appeal considered all the grounds urged against the punishment order and did not count upon the defence regarding safety lapses and the heavy rush at the cash counter etc. It was observed that his gross negligence, displayed conduct unbecoming of a cashier whose primary responsibility is to ensure safety of the cash at his disposal. Though the workman had emphasised on the fact that the loss is made good that failed to convince the Appellate Authority to absolve him of the charges and dismissed the appeal.

12. Having gone through the Enquiry Report I find that the enquiry findings though is brief, it is founded on the evidentiary material more specifically on the Investigating Officer's Report and evidence; in spite of investigation and also the enquiry the modus operandi for stealing the cash of Rs. 3,00,000/- is not traced. Facts remain that on 10.04.2008 the 1st Party being the cashier received the cash in question and handed over the said amount to Sh. Sudarshan R Patil Cash Peon to affix the Sangli Branch seal on the currency notes, it is also a fact that when the Cash Peon tendered the note bundles after affixing the Sangli Branch seal he did not verify the amount personally but directed him to keep the note bundles behind him and missing of the three bundles came to light when Sh. R B Satpute, another Peon who was to remit the amount to SBI came to the cash cabin and counted the same. Despite security lapses, dearth of space in the cash counter and the workman's busy schedule at the relevant time, fact remain that he was the custodian of the missing amount. The Investigating Officer in his report had observed that he had not ensured to lock the cash cabin from inside after receiving the cash bundle from Mr. Patil; he had kept the cash open behind himself and the bundles were not visible directly to him.

13. Clause 5 of the Bipartite Settlement dated 10.04.2002 between the management of 52 'A' Class Banks represented by Indian Banks Association and there workmen represented by the All India Bank Employees Association, National Confederation of Bank Employees and Indian National Bank Employees Federation, among other things contemplates gross misconduct at sub clause j as *doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss.*

14. Wherefore it is clear that it is not always mandatory that the negligence shall culminate into financial loss to the Bank, if the negligence is likely to involve the Bank in serious loss that is also an instance of gross misconduct. It is evident that the 1st Party exhibited gross negligence in respect of the missing cash bundles of value Rs. 3,00,000/- and the punishment for gross misconduct is enumerated by term 6 of the above settlement. Accordingly, such misconduct draws punishment of removal / compulsory retirement / discharge with superannuation benefits / reduction of the scale of pay upto a maximum of two stages, stoppage of increment with or without cumulative effect, withdrawal of special pay, warning, censure or adverse remark or fine.

15. Probably by the punishment order the workman was deprived of one year of service, in his written brief he has pointed out that never in the past employees were removed from the service of the Bank due to their negligence while discharging their duties wherever financial loss to the Bank was not caused. The Investigating Officer suspected that theft of the cash by an outsider cannot be ruled out, he is not alleged of misappropriation or embezzlement for the charge of negligence, the punishment of removal from the service of the Bank is very very harsh and does not commensurate with the charges alleged against him.

16. After going through the entire record, it surfaces that the workman was without past record of misconducts to his credit, the negligence exhibited by him perhaps was an error of judgment at the spur of the movement. Since it is a misconduct of this nature committed by him for the first time, removing him from service though with superannuation benefit is excessive, disproportionate viz a viz the long unblemished service rendered by him to the 2nd Party and the

misconduct alleged and proved during the enquiry. Though there is no illegality in the punishment order, its justifiability cannot be endorsed in view of the observations made supra. Hence, I find it a fit case to intervene with the punishment order in exercise of the jurisdiction under sec 11-A of 'the Act'.

AWARD

The reference is accepted.

The order passed by the erstwhile Management of Vijaya Bank presently Bank of Baroda against the 1st Party workman Sh. Balachandra V Kulkarni, Cashier in imposing the punishment of removal from service with superannuation benefits w.e.f 26.11.2009 is modified. The workman shall be treated as on duty from the date of punishment till the date of his superannuation and he is entitled for 60% of the back wages for the said period.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 26th November, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2019

का.आ. 2129.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम च्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 50/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.12.2019 को प्राप्त हुआ था।

[सं. एल-12011/73/2001-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 3th December, 2019

S.O. 2129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2001) of the , Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 03.12.2019.

[No. L-12011/73/2001-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

C R 50/2001

I Party

The General Secretary,
Vijaya Bank Workers Organisation,
37/1, I Floor,
Car Street, Ulsoor,
BANGALORE-560008.

II Party

The Regional Manager,
Bank of Baroda
Head Office, 41/2,
M.G. Road, Trinity Circle,
BANGALORE-560001.

Appearance :

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. Udayshankar Rai

AWARD

The Central Government vide Order No.L-12011/73/2001-IR(B-II) dated 20.07.2001 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of Vijaya Bank to dismiss Shri. N. Shankare Gowda, Special Assistant from service is justified and legal? If not, to what relief the concerned workman is entitled to?”

1. The 1st Party Union has espoused the cause of the workman Sh. N Shankare Gowda / erstwhile employee of the Vijaya Bank presently Bank of Baroda who was dismissed from service on the allegation of misconduct.

2. The admitted facts of the case is,

the workman joined the service on 01.05.1975 as Clerk and was working as Special Assistant at Doddamage Branch. On the allegation of fraudulent withdrawals of accounts of customers, he was placed under suspension and issued charge sheet. Thereafter, Departmental Enquiry was held and Enquiry Officer held him guilty of charges. He submitted his remarks to the enquiry report however, the Disciplinary Authority accepted the Enquiry report and proposed to dismiss him from service. The workman gave his representation requesting the Disciplinary Authority to take a lenient view and exonerate him of the charges. However, without modification of the proposal made earlier, the 2nd Party passed the Punishment order on 19.06.2000. His appeal came to be rejected vide considered order dated 01.08.2000.

3. It is the claim of the 1st Party that, the charges are vague and lack material particulars. The customers have not complained to the Bank. During the enquiry, he was denied reasonable opportunity at every stage to defend himself. The documents produced by the 2nd Party and marked in evidence in support of charges were Photostat copies and are against the provisions of Bankers’ Evidence Act. The Customers’ statements produced during the enquiry were fraught with discrepancies. The finding of the Enquiry Officer is perverse without discussion as to how the charges are proved is discriminated from many other employees who though committed serious misconduct are left free.

4. The 2nd Party justified the Punishment order so also the fairness of the Domestic Enquiry conducted against him.

5. On the rival pleadings, touching the procedure of Domestic Enquiry a Preliminary Issue was framed and adjudicated after a full-fledged trial by upholding the fairness of the Domestic Enquiry.

6. Both have submitted oral and written argument.

7. It is a matter of record that my learned predecessor after giving his audience to both parties passed Award on 03.02.2015. Aggrieved by the Award the 2nd Party took the matter to the Hon’ble High Court in WP No. 41328/2015 DD 20.02.2019. The Writ Petition was allowed and the award is quashed and the matter is remitted for fresh consideration.

8. After remand both parties appeared through their learned counsels and have submitted their written briefs.

9. The charge sheet issued to workman runs into 5 pages; to epitomise the same,

Firstly, on 24.05.1999 he issued a loose cheque bearing No. 224875 to the customer Smt. Saroja who had come to withdraw Rs. 1,800/- from her SB A/c 4392. He received her signature on the loose cheque filled up the contents for withdrawal of Rs. 6,800/-; withdrew the amount and paid Rs. 1800/- to her. He entered her pass book in his own hand writing, stating the withdrawal as Rs. 1,800/- only. When the customer came to the Bank on 28.06.1999 to convert the saving account amount to Term deposit, she found the actual balance in the ledger was Rs. 87/-.

Secondly, on 03.06.1999 he made false credit entry of Rs. 25,000/- to the SB A/c No. 1601 pertaining to Sh. G Bhupathi without supporting voucher or paying-in-slip; Sh. G Bhupathi later on the same day withdrew the amount. Between last week of May and 1st week of July 1999, in the absence of Branch Manager, Sh. B V Poojary Assistant Branch Manager was in charge of the Branch. The CSE was supervising operations of SB, Current and Overdraft accounts and was maintaining Officer’s Cash Scroll. The extraction of balancing of SB Accounts was not done on second Friday on 11.06.1999, but was done on 18.06.1999. In order to suppress the above fraudulent withdrawal, he obtained a self cheque bearing No. 0089341 for Rs. 25,000/- from Sh. M T Range Gowda another customer of the Bank having SB A/c 3695 on 18.06.1999. Sh. Bhupathi prepared a credit paying-in-slip for Rs. 25,000/- for credit of the proceeds of the above cheque No. 0089341 to his SB A/c No. 1601 on 18.06.1999. The amount was withdrawn from the account of Sh. Range Gowda and credited to the account of Sh. Bhupathi, but without making entry in the ledger sheet of his account however, recorded in the Cash scroll, SB sub-day book etc.

Thirdly, Smt. Puttamma account holder of SB A/c No. 2037 was an illiterate; she remitted Rs. 10,000/- to her SB A/c on 28.05.1999. On 29.05.1999, he withdrew the said amount by forging her left-hand thumb impression in loose cheque No. 224966, filled the contents and passed the same.

Fourthly, customer Sh. Malaiah SB A/c No. 624 availed production loan of Rs. 25,000/- for raising tobacco. As per the arrangement with the tobacco Board, the sale proceeds Rs. 36,359.40 of tobacco was sent to the Branch by the Board to

the credit of Sh. Malaiah; on 01.02.1999, credited Rs. 21,000/- to his production loan A/c No. 25/98. CSE issued a loose cheque bearing No. 223639 on 01.02.1999 and obtained the signatures on both side of cheque for withdrawal of Rs. 21,000/- and informed him that the amount would be directly credited to his loan account. CSE altered the date of cheque but did not obtain drawer's authentication for alteration in date. He received the amount of Rs. 21,000/- Sh. Malaiah nor did he credit the amount to his loan account.

Fifthly, Sh. M.K Ranganath account holder of the SB A/c No. 2111 deposited Rs. 5,000/- on 04.05.1999. CSE issued counter foil of SB A/c paying-in-slip for the deposit with cash received seal of the Branch and his signature. But there is no relevant entry in the pass book, cash scroll and SB sub-day book of 04.05.1999. No such voucher / paying-in-slip was prepared and entered in SB ledger of Sh. M.K Ranganath. To suppress the above fact, on 18.05.1999 he made a fraudulent credit entry for Rs. 5000/- in SB A/c and pass book of Sh. M.K Ranganath in his own handwriting.

Sixthly, on 03.04.1999 he fraudulently withdrew from the SB A/c No. 172 belonging to Sh. Hanumantha Reddy by loose cheque No. 221294 and made entry in his own handwriting in the ledger sheet of SB A/c. On 08.04.1999 he prepared a cash Paying-in-slip for Rs. 2,000/- and remitted Rs. 2,000/- to the said account. He also made false credit entry of Rs. 10,000/- without valid credit paying-in-slip. But the said transaction is not reflected in the cash scroll and SB sub-day book. He has made entries of above fraudulent withdrawal credit in the ledger sheet in his own hand writing.

10. During the enquiry, the CSE had the assistance of Defence Representative.

11. The first witness for the 2nd Party was the Investigating Officer / MW-1, who after investigation submitted his Report Ex Mex-1. Through him the concomitant Bank records were marked, among other things he produced the Certified copy of the complaints given by Smt. Saroja and Smt. Puttamma witnessed by the Bank Officials, Statement of Sh. N Shivaramu Cash Handling Clerk, Statement of Sh. Basave Gowda Clerk dated 13.07.1999 and Complaint of Sh. Hanumantha Reddy were marked. During Cross examination, he admits that Sh. G Bhupathi did not give written complaint to the Branch.

Next witness was the Assistant Branch Manager / MW-2, he identified the hand writings, initials, and signatures of the staff members working in the Branch.

MW-3 was the then Branch Manager of the 2nd Party, he also identified the hand writing, signatures of the staff members working in the branch. His evidence was in tune with the charge sheet allegations.

MW-4 was a Clerk at the relevant point of time. His evidence was confined to the extent that on 28.06.1999 Smt. Saroja approached him and told him to withdraw the sum of Rs. 5,000/- from her SB A/c so as to convert to the Fixed deposit, but on verification of ledger he found that only Rs. 87/- was the balance in her account but as per pass book the balance was Rs. 5087/. In this regard, he has given a letter Ex Mex -38 dated 13.07.1999 to the Manager.

MW-5 was another Co-employee from the Branch who was handling cash and attending the work of writing of Day Book and preparation of Friday Account. He identified the statement given by him to the Investigating Officer.

12. During the course of enquiry, the Presenting Officer had alleged that the CSE and the Local Leaders are preventing the witnesses from appearing to enquiry. The 1st Party though did not adduce defence evidence, made submission that himself or local leaders have not prevented from attending the enquiry.

13. On an appreciation of oral and documentary evidence placed by the witnesses, the Enquiry Officer concluded that all the charges are proved.

14. The attack on the enquiry report is, none of the complainants were produced before the enquiry to subject them for cross examination. That apart, the 1st Party was not working as a Cashier. The then Cashier / Sh. Shivaramu / MW-5 had given statement Ex M-29 before the Investigating Office wherein he admits having paid Rs. 6,800/- with denominations of 100x68 to Smt. Saroja after receiving the token from her; on the reverse of cheque Smt. Saroja had signed twice. There was no conclusive proof about the handwriting of the 1st Party in the pass book showing the entry for Rs. 1,800/. There is no direct evidence as to who made the entry in the pass book.

With regard to Charge No. 2, the relevant Paying-in-slip which is a material document was not produced which would have established as to who was the author of paying-in-slip.

Regarding Charge No.3, though the 1st Party filled the contents of the cheque for the benefit of illiterate customer, it was only with a view to help her. The concerned cheque has two thumb impressions on its back side and the same is identified by way of endorsement. It is not the allegation that identification is done by Sh. Shankare Gowda. As per the statement of Cashier Sh. Shivaramu he had handed over Rs. 10,000/- to Sh. Shankare Gowda. His oral evidence before the enquiry is contrary to the documentary proof Ex M-20(a). He was uncertain as to who attested LTM of Smt. Puttamma.

Regarding Charge No. 4, Ex M-30 / loose cheque issued to Sh. Malaiah is signed twice on the reverse of the cheque indicating that it was signed before the cashier. The cash is paid in the denomination of 500x42. The oral evidence of

the cashier / MW-4 is contrary to the document Ex M-30. The complainant Sh. Malaiah is not examined to establish whether CSE has assured him for sanction of fresh crop loan. As per Ex M-30 / the copy of loose cheque issued to Sh. Malaiah cash of Rs. 21,000/- in denomination of 500x42 is received by him and he has signed twice on the back of the cheque which establishes that he presented the token to the cashier signed on the cheque and received the cash.

Regarding Charge No. 5, Sh. M K Ranganath has not given any complaint. During cross examination, MW-1 admits that Ex M-41(a) is the counter foil and handwriting expert's opinion is not obtained to ascertain the authorship of initials and signatures. Merely, by producing a counter foil it cannot be held that the 1st Party having received the cash failed to credit to the Account of Sh. K. Ranganath; 1st Party was not the cashier as on that day.

Regarding Charge No. 6, the loose cheque for Rs. 12,000/- is not produced wherefore, the evidence regarding its contents, signature and other details is not established. There was no police complaint against the 1st Party on allegation of destruction of Bank records; Rs. 2,000/- is credited by the Customer himself, the 1st party has only assisted him to prepare paying-in-challan. Regarding false entry of Rs. 10,000/- it may be a chance of mistake.

15. It is not out of place at this stage to mention that, none of the aggrieved customers who were cited as witnesses by the Management were examined before the Enquiry Officer. Instead a submission was made by the Presenting Officer that the 1st Party workman is preventing the witnesses from attending the enquiry. The Enquiry Officer proceeds with his probe by brushing aside the said submission under the assertion that, "...when the complainants are outsiders it is not always necessary that they should be necessarily examined and their non-examination does not make the enquiry invalid, if the management produces supported corroborated evidence to prove the aspects which contained in the complaint letters". In a Departmental enquiry, the Enquiry Officer does not enjoy the powers vested with an adjudicator of a judicial adjudication to summon the unwilling witnesses by resorting to coercive steps. It is not as if the management intentionally withheld the witnesses from examining them before the Enquiry Officer but their contention was they are unable to produce them due to interference by the CSE, the complaints by the customers at the threshold were taken on record by the Enquiry Officer subject to condition that concerned makers of the complaints are examined as witnesses before the enquiry or the management produces corroborative evidence in support of the allegation made in the complaint. The legal position is also in favour of the proposition that examination of a complainant in a Departmental Enquiry does not vitiate the proceedings. The law on the point is covered by the following judgements.—

- (1) AIR 1996 SC 1669 (1), State Bank of Patiala and Others vs S.K Sharma
- (2) AIR 2000 SC 3028, State Bank of India vs Tarun Kumar Banerjee and Others
- (3) 2010 AIR SCW 3859, U.P State Road Transport Corporation vs Suresh Chand Sharma
- (4) 2011 AIR SCW 2583, State Bank of Bikaner and Jaipur vs Nemi Chand Nalwaya

16. Going by the findings chronologically,

with regard to Charge No. 1, the Enquiry Officer observed that there is resemblance between the three signatures of Smt. Saroja / the complainant on the documents Ex M-2 (application submitted by her while opening the Account), Ex M-10(Complaint) and Ex M-10a (is the signature and there is another verifying signature of the complaint verifying the statement given by her before the Investigating Officer). The verification of the statement was before the witness Sh. A U Poojari, Asst. Branch Manager / MW-2 who had also identified the document and who had stated about the incident of misappropriation pertaining to SB A/c No. 4392, MW-2 was the person who had received Ex M-10 and forwarded to AGM, RO Hassan on 02.07.1999 since MW-2 was a Senior and responsible Officer, the Enquiry Officer accepted his statement. MW-1 is the Investigating Officer who also identified Ex M-10 and Ex M-10a and had stated that same was submitted by Smt. Saroja during the course of his investigation. Based on the corroborative statements of MW-1 and MW-2, the Enquiry Officer proceeded further to ponder over the charge. Ex M-3 was the loose cheque No. 224895 dated 24.05.1999 for Rs. 6,800/- drawn by Smt. Saroja on her SB A/c No. 4392; Ex M-4 was the copy of the Passbook showing the entry of the relevant date for withdrawal of Rs. 1,800/- viz a viz cheque amount of Rs. 6,800/- and the balance amount was shown as Rs. 5,087/-; Ex M-5 is the extract of the ledger sheet of the account wherein the withdrawal on the relevant date was shown as Rs. 6,800/- and the balance remaining was Rs. 87/. On observing the difference between the entries the Enquiry Officer inferred that the entries made in the passbook are inflated one. As per the statement of MW-2 the contents of the withdrawal slip was in the handwriting of CSE and he alone had passed the same. The CSE who was the Special Assistant as per the statement of MW-2 had made entries in the ledger sheet and the pass book so also the ledger abstract of SB A/c No. 4392. The statement of MW-2 regarding the handwriting was trusted by the Enquiry Officer since he has been working as an Assistant Branch Manager in the Bank since 29.05.1998 and it is not improbable for him to have acquaintance / familiarity with the handwriting initials of the staffs. Thus, the Enquiry Officer proceeded to record his inference that the CSE only was involved and was the entrusted party in the transaction. He had made inflated entry of Rs. 1,800/- as against the actual withdrawal of Rs. 6,800/- in her passbook without any reason and had shown the false credit balance of Rs. 5,087/- in the passbook instead of showing the correct debit entry of Rs. 6,800/- and credit balance as Rs. 87/. This inference assisted him to hold that the entry in

the passbook was fraudulent and intended to suppress the excess amount of Rs. 5,000/- withdrawn by him on 24.05.1999. The defence of the CSE was, there is contradiction with regard to the date of withdrawal; as per the document Ex M-3 date of withdrawal was 24.05.1999; as per the statement of MW-2 it was 24.09.1999. In this regard the Enquiry Officer marginalised the discrepancy as typographical error. The defence doubted MW-2's authenticity in identifying the disputed signature of the CSE. The Enquiry Officer records his satisfaction that MW-2 who deals with the signatures, handwriting and initials of the staff members working under him has identified the handwriting / initial of the CSE on the incriminating documents on Ex M-3, Ex M-4 and Ex M-5. At Ex M-2 Smt. Saroja had not stated to the effect that the signature was taken by CSE on blank SB withdrawal slip. According to the Enquiry Officer said omission was not significant since she was a villager. Thus, addressing all the defence grounds the Enquiry Officer recorded the finding as Charge No. 1 as proved.

Before this Tribunal it is urged that the above finding is perverse. But having gone through the findings, I am unable to subscribe to the said contention. The conclusion on the issue is followed by well-reasoned analysis of the evidence.

17. Regarding Charge No. 2, the supporting documents were Ex M-11 series the pay-in-slips and the specimen signature of the customer, the token register Ex M-12, Cash scroll (date not legible) Ex M-13, Ex M-14 Cash scroll of 18.06.1999, Ex M-15 the Credit entry, Ex M-16 pertaining to the Account No. 1601 of Sh. G Bhupathi. The statement of MW-2 was that, the credit entry of Ex M-15 is not backed by the credit voucher, it was further noticed by the Enquiry Officer that the entry at Ex M-15 is not genuine and there was no corresponding entry in the Officer / Cashier Cash Scrolls and SB sub-day ledger of 03.06.1999 that made him to hold that the credit entry of Rs. 25,000/- to SB A/c No. 1609 on 03.06.1999 was fraudulent. At Ex M-15 there was no entry regarding crediting Rs. 25,000/- to the SB A/c No. 1609 as per the pay-in-slip for Rs. 25,000/-. That steered him to record that not entering the credit of Rs. 25,000/- in the ledger sheet was to square up the fraudulent credit entry of Rs. 25,000/-. Again, relying on the statement of MW-2 the author of this entry was identified as CSE. Though, before this Court it is contended that the pay-in-slip was not produced. Unfortunately, 1st Party has lost sight of the document marked before the Enquiry Officer as Ex M-11(b).

18. Regarding Charge No.3, the onus of identification of the thumb impression on the disputed cheque was on the Enquiry Officer. The relevant documents were Ex M-20 specimen signature of the customer Smt. Puttamma, Ex M-28 the withdrawal form with 2 attested LTMs on the back side of the withdrawal forms. The Enquiry Officer though appreciated the defence that there is variation between the LTMs of the customer as found in the specimen signature card of her account and on the disputed document Ex M-20(a). Relaying on the circumstantial evidence that the cheque in question was dealt by CSE and as per the evidence of the cashier he had paid the cash to the CSE and there was the statement of the customer that she did not receive the money. This issue was also held proved. The defence had emphasised that, MW-1 / the Investigating Officer could not bring on record who had identified the LTM of Smt. Puttamma and oral evidence of MW-5 is contrary to the documentary evidence Ex M-20(a). But this contention is without merit. The very fact that the specimen LTM differs with the disputed LTMs of Ex M-20(a), the burden heavily shifted on the CSE to establish that he had no role in the transaction. Merely because there are 2 attested LTMs on the back of the withdrawal form Ex M-20(a) would not dilute the situation. The Enquiry Officer tracks CSE's involvement in each and every stage of the transaction and the cashier of the day had unequivocally stated that he had paid the cash to CSE only. Wherefore the logical inference drawn by the Enquiry Officer cannot be faulted.

19. Regarding Charge No. 4, there was a complaint by the Account Holder Sh. Malliah of not receiving the amount of the cheque from the CSE (complaint Ex M-37) and Dalit Sangarsha Samithi had also made complaint in this regard as Ex M-20. The cashier had deposed that the amounts of the cheque were received by CSE. The defence that the withdrawal slip was signed by the customer Malliah and he alone as taken the amount was not appreciated by the Enquiry Officer by observing that it is not improbable that at the time of issuance of token itself, they obtain two signatures of the tenderer of the instrument. The Enquiry Officer strongly relied on the statement of the cashier to arrive at his conclusion with regard to whom the amount was paid. In this regard the Enquiry Officer dwells upon the unshaken cross examination, evidence of the cashier MW-4. Though it was observed that paying cash in respect of the cheque to the CSE was contradictory to the Banking procedure, the Enquiry Officer exempted said irregularity on preponderance of probability in a small branch Doddarnagge where CSE was working, the cashier being junior to the CSE have obliged the CSE without suspecting his bona fides. Likewise, the defence that there was no eye witnesses was also brushed aside by observing that there was no animosity between the CSE and the witness.

20. Regarding Charge No. 5, the supporting documents were Ex M-4(a) / the complaint counter foil for the pay-in slip dated 04.05.1999 to the credit of the account holder which was not credited in the ledger sheet, Ex M-45 cash scroll, Ex M-44 officers cash scroll, Ex M-43 SB day book and Ex M-46 Pass book 41b, in this regard complaint was given by one M.A Sampath to the Branch Manager as per Ex M-42 stating that he had handed over Rs. 5,000/- on 04.05.1999 to the CSE to credit the same to the account of Sh. N K Ranganatha for which CSE has given the counter foil but the said amount was not credited. The complaint was referred by the Branch to the Regional Office as per Ex M-67. MW-3 the incumbent Branch Manager had stated that he found false entry of Rs. 5,000/- made to SB Ac 2111 on 18.05.1999. That led the Enquiry Officer to infer that he misappropriated Rs. 5,000/- received on 04.05.1999 for credit to SB Ac 2111 and

to cover up the said act from the knowledge of the customer he made fraudulent entry on 18.05.1999 and thus Charge No. 5 was held proved.

21. Regarding Charge No.6, the loose cheque leaf for Rs. 12,000/- dated 03.04.1999 was not produced. However, the records reflected that the cheque was passed for payment by the CSE in the relative debit entry with his initial in the ledger sheet of the account and also officer / cashier cash scroll and SB sub-day. The Enquiry Officer suspects the involvement of the CSE for disappearance of the loose cheque. Ex M-56 is the ledger entry dated 08.04.1999 which reflected that cancellation of debit entry of Rs. 12,000/- dated 03.04.1999 in respect of cheque no. 224294 and the cheque no is rewritten as 221294 for Rs. 12,000/- in the handwriting of the CSE and authenticated by him. Further there are three credit entries for Rs. 2,000/-, Rs. 10,000/- and another Rs. 10,000/- on 18.04.1999 which were all in the handwriting of CSE and authenticated by him. In the SB pass book Ex M-60 there is only one credit entry of Rs. 10,000/- as on 08.04.1999 which is also in the handwriting of CSE. But in the pass book there is no entry with regard withdrawal of Rs. 10,000/- as on 03.04.1999 credit of Rs. 2,000/- and Rs. 10,000/- as on 08.04.1999. On the above the Enquiry Officer would record that the three transactions noted above were not to the knowledge of the customer and the pass book entry was intended to suppress the three transactions in question from his knowledge. All these facts were highlighted in the evidence of MW-2 he had also identified the handwriting of the CSE; the Enquiry Officer observes that if the credit entry of Rs. 10,000/- made by the CSE on 08.04.1999 in the ledger sheet was genuine, same should have been reflected in the cash scroll and sub-day book of 08.04.1999 and they were not backed by valid credit voucher. MW-2 had also deposed that pg.42 and 43 of EP would depict as fictitious/ fraudulent entry.

22. It is borne from the records that the cash clerk had given statement before the Investigating Officer which was marked as Ex M-29 to the effect that on 29.05.1999 he had paid cash amount of Rs. 10,000 to the CSE as per his instructions and on presentation of the relative token. CSE opted not to cross examine him and also he did not adduce defence evidence nor did he give any statement in respect of the charge sheet allegation.

23. The 2nd Party during the course of the enquiry had produced the extracts of the attendance register, job rotation particulars to demonstrate the complicity of the CSE on the respective dates of alleged transaction. The identification of the writings and signature of the 1st Party on all the disputed documents were accepted on the basis of the evidence adduced by his Superior Officers, MW-2, MW-3 and his colleague M-4. The Enquiry Officer while evaluating the evidence has drawn the presumption on the basis of the documents pertaining to each transaction. A Civil Court acting in its Appellant jurisdiction will not introduce its own finding to that of the Lower Court when two views are possible in a given circumstance. The conclusion, finding the CSE guilty of the charges flows from the logical reasoning made in the body of the Report and it is not a perverse finding.

24. The judgments relied by the 1st Party in support of their case do not pertain to Industrial adjudication. The Enquiry Report is acted upon by the Disciplinary Authority vide detailed punishment order dated 19.06.2000 after considering his response to the Enquiry Report, so also his representation to the proposed punishment of dismissal from service.

25. The Apex Court in its judgment reported in 2005 7 SCC 435 in the matter of SBI and another vs Bela Bagchi and others, while upholding the punishment order passed by the Disciplinary Authority at para 15 observed thus:

"A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager Sh. V. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss also sans substance."

26. In the light of the above, I hold that the punishment of dismissing the 1st Party workman Sh. N Shankare gowda from service on the proved charges was justified and legal. The workman is not entitled for any relief under the reference.

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th November 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2019

का.आ. 2130.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 38/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.12.2019 को प्राप्त हुआ था।

[सं. एल-12012/32/2004-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 3rd December, 2019

S.O. 2130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 03.12.2019.

[No. L-12012/32/2004-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 29Th NOVEMBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 38/2004

I Party

Smt. Sharada Prabhakar,
W/o Sh. Prabhakar Shenoy,
D/No. C-4, Prakruthi Apts.
Opp. Kamath Nursing Home,
Kadri,
MANGALORE - 575 003.

II Party

The Assistant General Manager,
Syndicate Bank,
Zonla Office, Syndicate Towers,
UDUPI (KARNATAKA) - 576 101.

Appearance

Advocate for I Party : Miss. H. Ramya Kamath

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No.L-12012/32/2004-IR(B-II) dated 14.06.2004 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Syndicate Bank in dismissing the services of Smt. Sharada Prabhakar w.e.f. 26.08.1999 is justified? If not, what relief the said workman is entitled to?"

1. The claim of the 1st Party workman is that,

she joined the 2nd Party Bank as a part time employee in 1981 and was promoted as Sub-Staff on 25.01.1984. After prosecuting her graduation while on duty she gave representation for promotion to the Clerical Grade. She received the promotion cum transfer order dated 31.10.1995 to Ramnagar Branch which was at a distance of 250kms from Mangalore; during 1991 she developed Asthma and Tubercular Lymphadenitis (T.B); she developed acute drug allergy to the medicines imparted for curing TB during 1995-1996. On 08.04.1996, she received a Memo dated 08.01.1996 from the Central Accounts Office of the 2nd Party stating that, she is relieved in absentia w.e.f 08.01.1996; she also received another letter from the Divisional Office, Karwar / Transferee Divisional Office dated 07.05.1996. She addressed a letter dated 15.07.1996 to the General Manager (Personnel), Manipal, to consider her case on compassionate ground. The 2nd Party directed her to appear before the Medical Board vide letter dated 13.09.1996, the Medical Report suggested that she should be posted at a place where services of Physician and the Specialist facilities of Microbiology and Serological

investigations are available; vide letter dated 29.11.1996 she was informed that she had to report at the transferred Branch before 14.12.1996 otherwise her promotion will be forfeited; she requested to transfer her to Mangeshwar were vacancy existed and from where she could travel to and from Mangalore without much difficulty, this request was also turned down. At the last course of her treatment, she wrote a letter requesting to permit her to report to duty at Ramnagar Branch as a Clerk. Vide letter dated 04.05.1997 the Divisional Manager of the Zonal Office at Mangalore communicated to her that, promotion is forfeited and she was reverted as Attendant; aggrieved by the said order she approached the Hon'ble High Court in W.P No. 13490/1997, as per the interim order of the Hon'ble High Court dated 29.05.1997 she was permitted to report to duty in the Clerical Cadre and worked as **Self Developed and Qualified Cadre Clerk** till 24.10.1997. Subsequently she was informed the stay order issued was withdrawn, the Writ Petition was dismissed on 21.10.1997. On hearing that Bank is contemplating to revert her as Attendant, she fell ill and was advised treatment with bed rest; she submitted leave application for maternity leave w.e.f 25.10.1997 onwards. Because of her other ailments, she was forced to extend leave from time to time. Vide letter dated 13.01.1998 she was informed by Assistant General Manager, Zonal Office that she is granted leave for the period 08.12.1995 to 08.01.1997. She was also informed that, she would hear from the Bank separately regarding her absence from duty w.e.f 09.01.1997 onwards. On 29.01.1998 she requested for sanction of leave on medical ground; she was directed to report before Medical Board for medical check up on 07.04.1998, but she could not appear before the Medical Board since she received the communication only on 20.04.1998. However, she appeared before the Medical Board as directed in their letter dated 25.05.1998. The copy of the decision of the Medical Board was not furnished to her, though she had requested for the same. To harass her furthermore, she was issued charge sheet dated 02.12.1998, on the allegation of unauthorised absence w.e.f 25.10.1997 to 18.11.1998; she gave her reply denying the charges. Departmental Enquiry was initiated by appointing Enquiry Officer; the Enquiry Officer closed the enquiry without providing sufficient opportunity to her; the Enquiry Officer submitted his Enquiry Report and she was not called upon to submit her submission on the Enquiry report. Vide letter dated 02.08.1999 penalty of dismissal form service of the Branch was proposed, she was called upon to appear for personal hearing fixed on 16.08.1999; she submitted her written representation on that day; she received the final order of dismissal dated 26.08.1999; she preferred Appeal against the order of the Disciplinary Authority but the appeal came to be rejected. She was constrained to remain absent due to health reasons. Enquiry was held in total violation of principles of Natural Justice. The order of dismissal is arbitrary, illegal and unjustified.

2. The 2nd Party in their statement justified their action stating that, in the normal course Attenders on their promotion as Clerk were posted / transferred to the neighbouring districts where vacancies exist; the South Kannada District had more than adequate Clerical strength and North Kannada District had deficit staff / shortage; they deploy staffs from surplus pockets to deficient pockets. She had accepted the promotion as Clerk on 29.12.1995, which interalia states that she is liable for transfer to any Branch / Office of the Bank including Rural Branches; she was relieved from C.A.O Mangalore on 08.01.1996 and had to immediately report at Ramnagar Branch; without joining the Branch she remained absent unauthorisedly.

Since, she did not report at the Branch despite giving sufficient time, her promotion was forfeited vide letter dated 05.04.1997; she was posted to Ashok Nagar Branch, Mangalore as Attendant and she reported to the Branch on 14.05.1997; the Writ Petition filed by her finally came to be dismissed. While working at Ashok Nagar Branch, she remained absent from duties w.e.f 25.10.1997 without sanction of leave from the Competent Authority. As per the transfer order dated 29.10.1997 she was posted to Suratkal Branch i.e., within the same urban agglomeration of Mangalore, as Attender and was relieved in absentia on 29.10.1997; she did not report at the transferred place, she failed to submit Medical Certificate; the Bank expressed inability to sanction leave on Medical Ground vide letter dated 31.12.1997 and her explanation was called for regarding absence from 25.10.1997; vide letter dated 06.01.1998, she was informed that if she does not join duty at Suratkal Branch immediately on receipt of the said letter, it will be presumed that she has no intention to continue in Bank service etc.

On Medical Examination on 08.06.1998, she was found fit to continue employment; for her mild hypertension and migraine the Doctors did not recommend any rest / leave; even then she did not report to duty, she had exhausted all type of leaves; therefore, her absence from 25.10.1997 to 18.11.1998 was treated as unauthorised absence. Her service was not available for more than a year in the Branch; hence, on the charges of unauthorised absence without leave, charge sheet dated 02.12.1998 was issued.

During the Enquiry the Enquiry Officer gave several opportunity to her to attend the enquiry and defend her case; she had failed to make use of the same and was not serious in attending the enquiry; the Enquiry Officer hence concluded the enquiry Ex-parte and submitted his report; her submission to the enquiry report was considered by the Disciplinary Authority; considering the gravity and seriousness of the misconduct proved against her, the punishment of dismissal from the service of the Bank was proposed. After giving personal hearing the Disciplinary Authority awarded the punishment order having regard to the gravity / seriousness of the misconduct proved against her. Action of the Bank is legal, proper, valid and justified.

3. On the rival pleadings touching the fairness of enquiry a Preliminary Issue was framed tried and adjudicated holding the Domestic Enquiry as not fair and proper.

4. Thereafter, the 2nd Party examined one witness / the then Chief Officer at Regional Office, Mangalore (to prove the charges afresh). Her entire cross examination was suggestion of the case of the 1st Party and denial of the same by the witness.

During her rebuttal evidence the 1st Party reiterated her case; she maintained that, the Hospital conducted her medical examination as advised by the 2nd Party on 17.06.1998. The report dated 08.06.1998 is not real report of the Medical Board; there is another medical report drawn after the medical examination of 17.06.1998 and the said document is suppressed.

During her cross examination she admits that, she remained absent for 216 days between 25.10.1997 to 28.05.1998 and 167 days between 29.05.1998 to 14.10.1998. She identified the following Management documents confronted to her.

Ex M-1 the letter of the 2nd Party dated 26.05.1998 informing her that her absence from 09.01.1997 to 13.05.1997, 16.05.1997 to 29.05.1997 and from 25.10.1997 to 28.10.1998 will be treated as unauthorised since he failed to appear before the Medical Board;

Ex M-2 letter informing her that her absence from 29.05.1998 till date will be treated as unauthorised absence;

Ex M-3 her reply to the Enquiry Report;

Ex M-4 Proposal of punishment order;

Ex M-5 Minutes of Meeting of hearing on proposed punishment;

Ex M-6 written submission of the 1st Party on the proposed punishment;

Ex M-7 punishment order;

Ex M-8 Orders of the Appellate Authority;

5. During her further evidence, she has produced as many as 34 documents and further sought to produce the documents produced by the Management at her instance as Ex W-35 to Ex W-46 and again produced further documents as Ex W-47 to Ex W-54; at her request vide memo dated 17.04.2013 two documents marked as Ex W-46 and Ex W-54 are deleted. The documents produced by her from Ex W-3 to Ex W-34 are the Photostat copies of her leave letters, prescriptions and medical bills. Much of the remaining documents are the replications of Ex W-3 to Ex W-34.

Her absence between 25.10.1997 to 18.11.1998 was treated as unauthorised absence and the 1st Party does not dispute that, she remained absent during the above period. Going through the records produced by her as per Ex W-3 she was advised to appear for Medical Examination on 17.06.1998; she applied for leave (Ex W-5 dated 25.10.1997) with a xerox copy of the discharge summary to the effect that she suffered miscarriage and was admitted on 27.11.1997 and discharged on 28.11.1997; on 26.01.1998 she sought extension of leave for 15 days leave (vide Ex W-6) on medical ground, consequent upon the miscarriage along with the Medical Certificate; vide annexure Ex W-7 dated 09.02.1998 she sought for extension of leave by further 15 days from 11.02.1998 onwards with the Medical Certificate for treatment for Anaemia and General Weakness; vide annexure Ex W-8 dated 25.02.1998 she sought for extension of leave for further 20 days for the same Anaemia and General Weakness; likewise she went on applying for leave upto 14.11.1998.

From the above documents it transpires that, she suffered miscarriage on 25.10.1997 and was entitled for statutory leave of 45 days commencing from 25.10.1997 (Ex W-5 / Ex W-35).

6. The specific allegation levelled against her in the charge sheet dated 02.12.1998 was, she unauthorisedly remained absent for the period 25.10.1997 to 19.08.1998 for 216 days; the vide order dated 25.09.1998 of the Zonal Office, this period was treated as unauthorised absence.

Secondly, she remained unauthorisedly absent between 28.05.1998 to 14.01.1998 for 160 days was treated unauthorised absence; vide letter of Regional Office dated 14.10.1998. She remained unauthorisedly absent between 15.10.1998 to 18.11.1998 for 35 days and said period was treated unauthorised absence; vide order dated 18.11.1998 of the Regional Office. Deducting her maternity leave for 45 days commencing from 25.10.1997 still she shall be presumed to be unauthorisedly absent for 171 days + 160 days + 35 days.

7. Before considering whether the charges are proved it is worthwhile visiting background of her absence that, she was promoted vide order dated 02.11.1995 for Clerical cadre and was to report at the transferred place at Ramnagar Branch, instead she challenged her transfer order before the Hon'ble High Court in WP NO. 13490/1997, which came to be dismissed as without merit. During the interregnum period by virtue of Ex-parte interim order granted dated 25.09.1997, she enjoyed the post of Clerical cadre at Ashok Nagar, Mangalore for a short period until the dismissal of the Writ Petition. Before filing the Writ Petition, she had prepared herself to report at Ramnagar and had sent a

communication to a Deputy General Manager of the Bank. On the basis of her grievance of illness she is referred to Dr. T.M.A. Pai Rotary Hospital for medical examination. After the report of the Hospital that she is suffering from hypertension and migraine, is fit to continue the employment (dated 21.07.1998), she rushed to the Hon'ble High Court (as could be inferred by the orders of the Hon'ble High Court, the copy of which is available on record). It also transpires that, during the pendency of Writ Petition on her representation to adjust her in the clerical cadre at the place where she could get adequate medical facilities for treatment of her ailments, the Bank decided to offer posting in the clerical cadre at Ghataprabha in Belgaum district. It was the Management view that Ghataprabha is equipped with proper medical facilities and is provided with sanatorium for treatment of tuberculosis patient. But this proposal was not acceptable to her, she insisted for a place where medical facilities which is not less than those offered by the medical college; since Ghataprabha does not have Medical College, according to her the same fall short of minimum requirement stipulated by her Doctor (As surfaces in the Judgement of the Hon'ble High Court in WP NO. 13490/1997). Thus, she ended up with a demotion order dated 05.04.1997 back to the cadre of Sub-Staff.

8. Be that as it may, the evidence adduced before this Court in support of the charges fall short of the Primary evidence. The witness / MW-2 only reiterated the charge sheet allegations. Since, the period of absence is not disputed and the health ground is projected as explanation to the charges the burden shifts to the 1st Party workman to prove her medical condition during the period of her absence. Though, she had submitted leave letters along with medical certificate recommending rest, prescription and medical receipts, the burden heavily rested on her to make an attempt to prove the genuineness of her documentary evidence. Once, she had sought for witness summons to two of the Doctors who had treated her, but did not take further steps either to summon them before this Tribunal or to examine them on commission. It is not as if she is disabled to pursue her claim. Thrice she was before the Hon'ble High Court and has changed her counsels / representatives one after another. Though, the 2nd Party witness filed the affidavit evidence as early as 26.08.2007, her cross examination was done on 16.08.2010; from there after the workman adduced rebuttal evidence on 27.07.2011. The case file is inflated by any number of applications, memos, and objections to the said applications and memos with written arguments.

9. She has disputed the medical report of the medical Board dated 21.07.1998 stating that, she had appeared before the medical examination only on 17.06.1998 where as the medical report bears the date 08.06.1998. According to her the true medical report is not made available to her. As per the charge sheet allegation, she is examined at the Hospital on 08.06.1998. Though the Domestic Enquiry conducted against the workman is held not fair and proper for academic purpose it is worth pursuing the reply given by her to the said charge sheet. She did not dispute the date of her medical examination by the medical Board. She only contented that, though requested the 2nd Party had not sent her the medical examination report. That leads this Tribunal to hold that, during the medical examination of 08.06.1998, she was found fit to continue employment but she failed to report at her new place of work at Suratkal Branch, that follows, she remained unauthorisedly absent between 25.10.1997 to 18.11.1998. Though she had submitted leave applications she has failed to establish before this Tribunal that on medical ground she had remained absent. Not reporting to duty at the transferred place in Suratkal Branch amounts to wilful insubordination and disobedience to lawful reasonable order of the Management and is a misconduct under 19.7E of the Bipartite Settlement.

However, coming to the question of the Punishment Order, her dismissal from service is harsh and disproportionate looking from the angle of her past service record. She had joined the service as a Sweeper thereafter was appointed as a Sub-Staff, she qualified herself for the Post of Clerical Cadre by that time she was married and had a family to look after. It is the case of the 2nd Party that during the medical examination she was found suffering with migraine and hypertension. It is in the course of human behaviour to look for convenience and comfort as much as possible. Ofcourse, she cannot seek as of right, a place of her choice and has exhibited insubordination by not reporting at the transferred place. Still having regard to the circumstance, in the considered opinion of this Tribunal the Punishment order requires to be modified to termination with all consequential benefits.

AWARD

The reference is accepted.

The punishment order imposed by the 2nd Party vide order dated 28.06.1999 on the 1st Party workman Mrs. Sharada Parabhakar in dismissing her from the service of Bank without notice is modified. Instead, she shall be treated as removed from service with all consequential service benefits. The monetary benefits arising from the above award shall be released in her favour within 40 days of publication of Award otherwise same shall carry future interest at 6% per annum till the date of payment.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 29th November, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2019

का.आ. 2131.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोरपोरेशन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 41/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.12.2019 को प्राप्त हुआ था।

[सं. एल-12012/39/2010-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 3rd December, 2019

S.O. 2131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2010) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Corporation Bank, and their workmen, received by the Central Government on 3.12.2019

[No. L-12012/39/2010-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH NOVEMBER 2019

PRESENT : JUSTICE SMT.RATNAKALA, Presiding Officer

CR 41/2010

I Party

Sh. H Y Nagaraj,
C/o Smt. Lalitha,
H.E. Fast Track Court,
Madikere - 571 201.

II Party

The Chief General Manager,
Corporation Bank, Head Office,
Mangaladevi Temple Road,
MANGALORE - 575 001.

Appearance :

Advocate for I Party : Mr. M.R. Ravindra

Advocate for II Party : Mr. Pradeep S Sawkar

AWARD

The Central Government vide OrderNo. L-12012/39/2010-IR(B-II) dated 18.11.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity ‘the Act’ hereafter) referred the following Industrial Dispute for adjudication.

“Whether Shri H.Y. Nagaraj is justified in demanding permanent absorption to the post of Sub Staff by the management of Corporation Bank? What relief the concerned workman is entitled to?”

1. The 1st Party workman has raised this dispute claiming that,

he was appointed as a Sub-staff on casual basis with the 2nd Party w.e.f 22.11.1997. His name was sponsored by Employment Exchange Department and after interview he was appointed. He was issued letter on 15.06.1999 for the interview, accordingly he appeared also. He was empanelled and was working as and when the branch called for work as Sub-staff. As per the provisions of Bipartite Settlements, the 2nd Party is appointing temporary Sub-staff of a particular place as permanent sub-staff, in the clear vacancy at that place. He was called for an interview on 20.06.2002 he appeared with all material documents; he was working at Bettageri Branch which is near to Madikeri Branch. He has worked as sub-staff for more than 6 months in the place of a vacant post of Sub-staff. Instead of absorbing him to the said post 2nd Party transferred another staff to the said post and posted the 1st Party to work as casual Sub-staff on occasional basis; there is a permanent vacancy of sub-staff at Madikeri Brach and he is eligible to be absorbed as permanent employee as on 18.04.2002. But the 2nd Party with malafide intention appointed another person namely B.K. Raja as Probationary Peon / Sub-staff. Sh. B.K. Raja was working in different branches as a Driver and was brought to

Madikeri Branch and absorbed permanently against settled rules and guidelines. He made representations to the 2nd Party to secure a post as and when vacancy arose. Since he raised the dispute, he is deprived of his casual vacancy and not accommodated even on casual basis. Junior Sub-staff to him are posted as Sub-staff at various Branches of Udupi, Mangalore and various other regions of the Bank. The action of the 2nd Party is discriminatory hence prayer to reinstate him with full back wages etc, create a job and absorb him with all benefits.

2. The counter of the 2nd Party to the claim is,

in the matter of appointment of Sub-staff, Circular No.97/1998 dated 18.03.1998 issued by the Bank governs the eligibility norms and procedure for appointment of Sub-staff, by working as a Temporary / Casual Sub-staff 1st Party does not acquire any right for selection to the post of permanent Sub-staff. For empanelment of temporary employees list of eligible candidates is intended from local Employment Exchange and the candidates are interviewed by the committee constituted; the selected candidate are empanelled. They are engaged on a Seniority basis whenever a temporary vacancy arises. They are issued orders specifying the vacancy and durations of the appointment; the engagement would automatically cease upon completion of the period of appointment. Whenever temporary vacancy is identified and sanctioned by the Head Office, all the temporary Employees who had worked in the Branch along with other general eligible candidate like permanent part time sweeper who have completed minimum qualified service of five years and personal car Drivers of executives / Branch Heads, coming within the scheme formulated for the purpose are called for interview. The Interview committee is constituted by the concerned Regional/Zonal Office. The recommendations of the Interview Committee and the Zonal Office are forwarded to the Head Office, subsequent to which the Head Office issues Orders of appointment.

3. It is further pleaded by 2nd Party that the Board of Directors of the Bank has adopted procedure for empanelling Temporary Peons / Temporary Part Time Sweepers for filling up permanent vacancy of Peons / PTS and a Circular No. 374/2009 dated 26.06.2009 was issued; it is in accordance with the ruling of the Hon'ble Supreme Court and the instructions given by the Ministry of Finance with the advice of Department of Personnel and Training as per the procedure at the relevant time a panel of Temporary Sub-staff was constituted at Madikeri Branch in year 1995. On account of the transfer of a Sub-staff one vacancy arose at Madikeri branch in 1999. In order to fill up the post interview was conducted in the year 1999. 1st Party along with 8 others including a permanent part time sweeper one Sh. Satish Kumar. K N was called for the Interview. The permanent part time sweeper was working in the Madikeri branch since 01.08.1986 and fulfilled the eligibility criteria; and he scored highest marks in the interview; his candidature was recommended by the Interview Committee; accordingly he was appointed as permanent Sub-staff.

4. It is further stated that with the approval of the Board,

2nd Party formulated a scheme for absorption of personal car Drivers engaged by Bank's executives into Sub-staff cadre. However, the absorption is limited upto a cut-off date i.e., June 1997 in view of the guidelines issued by the Government of India. As per the scheme a maximum of five personal car drivers of executives per year could be considered for appointment as regular Sub-staff of the Bank, subject to fulfilling the terms and conditions laid down in the scheme. When a vacancy of permanent sub-staff arose at the Madikeri Branch on account of retirement, interview was conducted on 26.03.2002 to fill up the said vacancy; three candidates fulfilling the eligibility criteria were called for interview. Among them Sh. B.K Raja who had worked as personal car driver of the Branch Manager, LBO, Madikeri since 1992, who was considered for the post of Sub-staff in year 1999, but was not selected, ranked No.1 by the interview panel and was recommended for his appointment as permanent Sub-staff. Aggrieved by the appointment 1st Party filed a Writ Petition before the Hon'ble High Court in W.P No. 2648/2003 (S) and sought a direction to the Bank to appoint him for the post of permanent Sub-staff in Madikeri Branch. After addressing argument his counsel filed a memo seeking withdrawal of the Write Petition with liberty to raise an Industrial Dispute. Accordingly, the Hon'ble High Court rejected his Writ Petition and give liberty to raise Industrial Dispute. There is no merit in his contentions.

5. To substantiate his claim the 1st party workman examined himself as WW-1 and produced documents Ex W-1 to Ex W-26. The 2nd Party examined their witnesses and marked documents Ex M-1 to Ex M-11. Both have placed their argument in writing. Both parties have reiterated their case during their evidence with concomitant documentary proof.

6. The whole attempt in this adjudication is about the justifiability of the demand raised by the workman. There is no gain say about the policy that is followed by the 2nd Party in the matter of empanelling the temporary peons / temporary part time sweepers for filing up the permanent vacancy of Peon / PTS in their Branches. The procedure is outlined by way of a circular No. 374/2009 dated 26.06.2009. It is also not in dispute that the panel of temporary sub-staff was constituted at Madikeri Branch of the Bank in the year 1985; the 1st Party was one among the candidates empanelled and he continues till date to be so. He has produced certified copy of the memo filed before the Hon'ble High Court (Ex W-20). By way of the Memo he represented that he is a workman and dispute regarding absorption into permanent service is an Industrial Dispute within the meaning of sec 2(k) of 'the Act', in view of the objection raised by the Respondent (Management) in their objection statement; there is alternative and efficacious remedy available under the Industrial Dispute Act and further sought leave of the Hon'ble High Court to permit him to raise Industrial

Dispute....etc and pass order reserving liberty to approach the Labour Court. An affidavit sworn by the Then Senior Manager in the Zonal Office of the 2nd Party, before the Hon'ble High Court is placed on record by him, wherein it was averred that Petitioner (1st Party herein) continues to be in the panel of temporary sub-staff in Madikeri Branch and he will be considered for permanent appointment as and when vacancy arises in future. The deponent of the affidavit had also explained in detail by producing the relevant office orders, that the Man power strength of Madikeri Branch was fixed at 18 and the sub-staff requirement was 2 vide office order dated 16.07.2003; again the man power is assessed in the year 2008 vide office order dated 10.03.2008 and the sub-staff strength is fixed at 2; previously the strength of the sub-staff in Madikeri Branch was 3 at that point of time K.N Satish Kumar and B.K Raja were already working as Permanent Sub-staff pursuant to their appointment on 03.08.1999 and 18.04.2002 respectively. One Sh. B.N Muthanna who was senior to them retired from service on 30.09.2005, but there was no vacancy as the strength had reduced to 2 in the year 2003 itself. Those two persons namely K.N Satish Kumar and B.K Raja are continuing to work in the Branch and no vacancy has arisen from 2003 onwards; hence the question considering the case of petitioner for permanent appointment did not arise. The Bank has not appointed any other person as Permanent Sub-staff in Madikeri Branch.

7. The 1st Party has not contradicted the above position as it exists at Madikeri Branch. In fact, he had filed the Writ Petition seeking a direction to appoint him to any of the Branches of the 2nd Party; it is not his case that he is terminated or refused employment by the 2nd Party, he does not claim to have served continuously for more than 240 days preceding a calendar year; on his own showing he worked for 79 days from 07.11.1997 to 1999. Obviously, that does not qualify for **continuous service** within the meaning of sec 25-B of 'the Act'. His grievance is there was occasion to appoint him as Permanent Sub-staff at Bettageri Branch but the 2nd Party transferred another person from Head Office to Bettageri branch; said Ganapathi was working as a Permanent Security Guard at the Head Office and was incompetent to the said post.

8. The 2nd Party contradicts his claim based on his service rendered at Bettageri Branch on the ground, a regular vacancy can be filled up either by requirement or by transfer depending upon the administrative convenience / exigency; even if he worked for one or two days at Bettageri Branch on temporary basis that does not give rise to any vested right for him to claim permanent appointment at Bettageri Branch. Said stand of the 2nd Party does not warrant any correction or modification; he is not an empanelled member at the Bettageri Branch. Sh. B K Raja and K N Satish Kumar are selected in accordance with the procedure by calling for applications when the vacancy arose at the Madikeri Branch; the selection of Permanent Sub-staff / Part Time Sweeper is in accordance with the circular No. 374/2009 dated 26.06.2009 (Ex M-3). Clause 2.1 of the said circular contemplates, in respect of new branches / offices or existing branches where there is no temporary panel; whereas clause 2.2 pertains to branches where there is already temporary panel of Sub-staff and PTS already in existence. 1st Party was empanelled in the Madikeri Branch of the Bank in the year 1995. In respect of the new branches they were required to place indent with the local Employment Exchange and advertise employment notice in the local News Paper but in respect of the Branches where temporary panel of Sub-staff was already in existence, there was no such requirement; the Branches were to utilise and make appointment among from the persons who are working on Temporary / Part Time basis by conducting interviews in accordance with clause 20.12 of the first Bipartite Settlement.

9. 1st Party made effort to question the legality of the earlier appointments by filing an application calling for the details of their seniority list, enrolment details at the Employment Exchange etc. He also sought for calling the documents pertaining to vacancy position at Bettageri Branch and absorption of Sh. Ganapathi / Security Guard who was working at Head Office at Mangalore. On contest his application is dismissed.

10. He shall rest his claim on a definite ground but not on uncertain facts. After the 2nd Party placed the details of the earlier appointments made at the Madikeri Branch he has withdrawn his Writ Petition. Sh. B K Raja and K N Satish Kumar are not the parties in this reference. The legality of their appointment is not within the scope of the issue referred; he had filed an application at the final stage to consider his case and pass award in terms of the Award passed by this Tribunal in CR No. 18/1990. In response to the same the 2nd Party has produced the Photostat copy of the judgment passed by the Hon'ble High Court in W.P No. 32281/1999 dated 03.06.2005, it was a Writ Petition filed by the 2nd Party against the award passed by this Tribunal in CR No. 18/1990. The subject referred to this Tribunal for adjudication was the termination of a Temporary Sub-staff by the 2nd Party. This Tribunal directed the Bank to treat him as a Permanent Sub-staff from the date of the Award etc. The Hon'ble High Court in W.P No. 32281/1999 quashed the said award as without jurisdiction. Now the Award passed in CR No. 18/1990 does not come to his aid. The appointment on two earlier occasions are done by interviewing the eligible candidates, the candidates scored high in the interview; the appointment of Sh. B K Raja who is alleged by 1st Party as working at different Branches as Driver is shown to be the Personal Car Driver of the Branch Manager, LBO, Madikeri Since 1992 and considered for the post of Sub-staff in the year 1999; Sh. B K Satish Kumar was the Part Time Sweeper since 01.08.1986 and fulfilled the eligibility criteria and he came out successful in the interview conducted on 28.06.1999. The strength of Sub-staff at Madikeri Branch being 2 and not vacant, there is no justification in his demand for absorption to the post of Temporary Sub-staff. The 2nd Party being the Nationalised Bank and the matter of the appointment of their Sub-staff reign by Circular No. 97/1998 dated 18.03.1998 (Ex M-1), the circular issued by the Head Office and the subsequent modified circular dated 26.06.2009 (Ex

M-3), the demand raised by the 1st Party workman for his absorption to the post of Permanent Sub-staff is against the existing policy and procedure and not justified.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th November, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 4 दिसम्बर, 2019

का.आ. 2132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 2/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.11.2019 को प्राप्त हुआ था।

[सं. एल-20012/99/2018-आईआर (सीएम-1)]

एस, सी. राय, अनुभाग अधिकारी

New Delhi, the 4th December, 2019

S.O. 2132.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 2 of 2019) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 20.11.2019.

[No. L-20012/99/2018- IR(CM-1)]

S.C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D.Act.1947

Ref. No. 02 of 2019

Employer in relation to the management of Katras Area, M/S. BCCL

AND

Their workman

Present:- Shri D.K.Singh, Presiding Officer

Appearances :

For the Employers : Shri Rahul Mondal, Dy. Manager

For the Workman : Shri Rajneesh Prasad Gupta, (In Person).

State :- Jharkhand.

Industry :- Coal

Dated 24.10.2019

AWARD

By order No. L-20012 /99 /2018/IR (CM-I) dated 07.12.2018 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section(1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Katras Area No.IV of M/S BCCL in denial of payment of HRA @ 20% to Sri Rajneesh Prasad Gupta . P.No. 01476860 General Mazdoor , Katras Area of BCCL is justified? If not, what relief the workman is entitled to?”

2. This Case is received from the Ministry on 01.01.2019. The Sponsoring Union files written statement on 11.01.19 and the management files written statement on 01.03.2019 and rejoinder and document have also been filed by the parties. Thereafter the case is fixed for argument on merit on prayer of both side. But during the pendency of the case the workman concerned appear and files a Withdrawal Petition mentioning their in that he do not want to pursue the reference case, so case may allowed to be withdrawn. The prayer of concerned workman is allowed, he has been permitted to withdraw the same. Hence an award of No.Dispute is passed, accordingly.

D. K. SINGH, Presiding Officer

नई दिल्ली, 4 दिसम्बर, 2019

का.आ. 2133.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सीला सॉल्यूशंस प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम च्यायालय संख्या 2, मुंबई के पंचाट (संदर्भ संख्या 7/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.11.2019 को प्राप्त हुआ थ।

[सं. एल-11012/08/2017-आईआर (सीएम-I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 4th December, 2019

S.O. 2133.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai (Ref. No. 7/2018) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. SILA SOLUTIONS PRIVATE LIMITED and their workmen, which was received by the Central Government on 21.11.2019.

[No. L-11012/08/2017-IR(CM-I)]

S.C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/07 of 2018

EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. SILA SOLUTIONS PVT. LTD.

M/s. Sila Solutions Pvt. Ltd.,
1, Gordhan Building, 2nd Floor,
Dr. Parekh Street, Behind Girgaum Court,
Prarthana Samaj, Mumbai – 4000 004.

AND

THEIR WORKMEN

Shri Pralhad Murlidhar Sarode,
R/o Sarode Niwas Magathane,
Taluka - Borivali,
Mumbai – 4000 066.

APPEARANCES:

FOR THE EMPLOYER : Mrs. N.R. Patankar, Advocate

FOR THE WORKMEN : In person

Mumbai, dated the 18th October, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-11012/08/2017 – IR (CM-I) dated 15.02.2018. The terms of reference given in the schedule are as follows :

“Whether the demand of Shri Pralhad Murlidhar Sarode, Kitchen Steward joined the services with M/s. Sila Solution Pvt. For reinstatement in service with full back wages and continuity of service w.e.f. 23.04.2016 at Mumbai International Airport by refusing alternative posting at different location is just, fair and proper ? If not, what relief the concerned workman is entitled to and from which date ?”

2. After the receipt of the reference, both the parties were served with the notices.

3. The concerned workman is present. He has filed application Ex.9 stating therein that he wants to withdraw the reference on the grounds stated in the application. Today also he has stated before the court that he does not want to proceed with the reference. He has admitted his signature on Ex.9.

4. Since the reference is withdrawn, it is disposed of. Hence Order.

ORDER

Reference is withdrawn and disposed of with no order as to costs.

Date: 18.10.2019

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 4 दिसम्बर, 2019

का.आ. 2134.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. -1, धनबाद के पंचाट (संदर्भ संख्या 26/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.11.2019 को प्राप्त हुआ था।

[सं. एल-20012 / 249 / 2004-आईआर (सी-1)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 4th December, 2019

S.O. 2134.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 26 of 2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 20.11.2019.

[No. L-20012/249/2004- IR(C-1)]

S.C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 26/2005

Employer in relation to the management of Kusunda Area of M/s. BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers :- None.

For the workman :- None.

State : Jharkhand.

Industry:- Coal
Dated : 24.10.2019

AWARD

By Order No.L-20012/249/2004- IR (C-1) dated 31/03/2005 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of BCCL Kusunda Area in dismissing Sri Dhananjay Das, Pers. No. 02487080, Miner/Loader from service w.e.f. 23.09.2000 is just, fair and legal? If not, to what relief is Sri Dhananjay Das entitled?”

2. After receipt of the reference, both parties were noticed and both parties did not appear before this Tribunal,. Case is pending since 25/04/2005 and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 4 दिसम्बर, 2019

का.आ. 2135.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ऐयर इंडिया चार्टर्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 48/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.11.2019 को प्राप्त हुआ था।

[सं. एल-11012/23/2014-आईआर (सीएम-1)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 4th December, 2019

S.O. 2135.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Eranakulam (Ref. No. 48/2014) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India Charters Limited, and their workmen, which was received by the Central Government on 20.11.2019.

[No. L-11012/23/2014-IR(CM-1)]

S.C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Thursday the 31st day of October 2019, 9 Kartika 1941)

ID No. 48/2014

Workman	:	The General Secretary Aviation Industry Employees Guild Old Airport, Santacruz (East) Mumbai - 400029 By Adv. M.K.Aboobacker
Management	:	The Chief of Personnel Air India Charters Limited Old Airport, Santacruz (East) Mumbai - 400029 By M/s Menon & Pai Adv.Benny P. Thomas

This case coming up for final hearing on 04-09-2019 and this Tribunal-cum-Labour Court on 31-10-2019 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-11012/23/2014-IR(CM-I) dated 25.09.2014 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“Whether the action of the AICL Management in terminating the services of Shri.P.M.Subair is fair and justified? To what relief the workman /the Union is entitled to?”

3. The union entered appearance and filed claim statement. According to the union the workman was employed as ramp service agent in the service of the management. He was appointed on renewal contract basis for a period of 3 years from 07.04.2009. He was terminated from the management company for allege absence from duty on 04 & 15.09.2009 and for having forged the signature of the Duty Officer on the manual attendance card. He was terminated from service without giving notice and without following the principles of natural justice. The enquiry was total farce besides being one sided. The Enquiry Officer submitted his report on 02.06.2010 finding the workman guilty of the charges. During the enquiry the workman was denied the list of witness and documents produced by the management. The union also raised an objection that the Vigilance Officer was present during the course of enquiry, though he was not a member of the enquiry committee. All the requests made by the union were rejected by the Vigilance Officer. Further the defence counsel was denied opportunity to cross examine the witness whereas the committee extensively cross examined the workman. On the basis of the enquiry report the workman was terminated with effect from 14.12.2009 vide letter dt.16.07.2010. In the mean time the employees of AICL were transferred to AIATSL. In the conciliation proceedings dt.15.06.2012 it was decided to reinstate the workman if he is not found guilty by the enquiry committee without any wages and without any service benefits. In the fresh enquiry, the workman had to defend his case, since the counsel had withdrawn due to non co-operation of the committee. The enquiry committee submitted its report on 24.08.2012, finding the workman guilty of the charges alleged against him. However the question of reinstatement of the workman was left open at the discretion of the competent authority. The service of the workman was again terminated by the management. The conciliation proceedings were initiated and in the proceedings held on 14.12.2012 the management was advised to reinstate the workman in service as he is not found guilty of charges framed against him. The management finally rejected the advice of the Conciliation Officer. The punishment of the workman is illegal, improper, unreasonable and unjust. He has not committed any breach of his duty. The workman was terminated from service without giving any notice and even without asking for any explanation. The impugned punishment is bad and unjust as the punishment was imposed on an enquiry report which is conducted violating the principles of natural justice.

4. The management filed written statement denying the above allegations. According to the management the workman was appointed by the management as Ramp Service Agent based on a contractual agreement for a fixed period of 3 years from 07.04.2009. The workman absented from work on 04.09.2009 and 15.09.2009 but his time card was punched both “in and out”. And on a later date he claimed over time also. It is reported that the time card is manually maintained by the department and the signature of Shift Incharge for the above two days but his name was not roistered for any duty in the job allocation sheet prepared by the department and the same was marked “L” indicating that he was on leave. Further it was seen that the Shift Incharge whose signature resembled the signature on his card was availing his “off” and was not on duty on the above dates. Hence it is clear that the signature of the Shift Incharge in the time card of the workman was forged. The management issued notice and charge memo to the workman as per order dt.11.05.2010 and constituted an Enquiry Committee to enquire in to the charges leveled against the workman. The Enquiry Committee returned a finding of guilt against the workman. The workman approached the Regional Labour Commissioner (Central) through the union, demanding reinstatement in service. In the proceedings dt.15.06.2012 it was decided to conduct a fresh enquiry against the workman. Accordingly another Enquiry Committee was constituted vide order dt.25.12.2012. The Committee conducted the enquiry in compliance with the principles of natural justice and submitted the report finding the workman guilty of charges. The disciplinary authority based on the report of the Enquiry Committee and considering the gravity of the charges terminated the service of the workman. The dismissal of the workman is legal, justifiable and is in compliance with the principles of natural justice.

5. Though an opportunity was given to the union to file rejoinder the same was not filed by the union.

6. The union remained absent in the proceedings from 09.01.2017. There was no representation for union on 09.01.2047, 23.02.2017, 12.04.2017 and 02.06.2017. Hence the union was called absent and declared ex-parte vide order dt.07.07.2017. The management produced the enquiry file and the same is marked as Exbt.M1.

7. Though the workman through the union entered appearance and filed a claim statement alleging improper conduct of enquiry by the Enquiry Committee and violation of principles of natural justice, the union remained ex-parte after the same. The management produced Exbt. M1 enquiry report to substantiate their case that a proper enquiry was conducted against the workman and the finding of the Enquiry Committee was supported by legal evidence. It can be seen from the charges and report of enquiry committee that the allegations against the workman are of very serious nature. The Enquiry Committee found that the workman indulged in serious manipulations in a high security area. The Disciplinary Authority taking note of the seriousness of the proved misconduct dismissed the workman from service of the management.

8. In view of the fact that the union remained ex-parte and there was no challenge to the findings of enquiry and in view of the fact that there was no attempt on the side of the union to substantiate their case, I am inclined to hold that the action of the AICL management in terminating the service of Sri. P.M. Subair is fair and justified.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 31st day of October, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	-	Nil
Witness for the Management	-	Nil
Exhibits for the workman	-	Nil

Exhibits for the Management:-

M1 - Enquiry File

नई दिल्ली, 4 दिसम्बर, 2019

का.आ. 2136.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स नेशनल एविएशन कंपनी ऑफ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 83/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.11.2019 को प्राप्त हुआ था।

[सं. एल-20013/02/2019-आईआर (सीएम-1)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 4th December, 2019

S.O. 2136.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur (Ref. No. 83/2012) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. National Aviation Company of India Limited and their workmen, which was received by the Central Government on 21.11.2019.

[No. L-20013/02/2019- IR(CM-1)]

S.C. RAY, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर सी.जी.आई.टी. प्रकरण सं. 83 /2012

राधामोहन चतुर्वेदी

पीठासीन अधिकारी

विनोद सिंह शेखावत पुत्र श्री बजरंग सिंह शेखावत

निवासी मेहरोली (बड़ापाना) तहसील श्रीमाधोपुर,

जिला — सीकर।

बनाम

1. चेयरमैन एण्ड मैनेजिंग डायरेक्टर,
नेशनल एवीवेशन कम्पनी ऑफ इण्डिया लि.
एयरलाईन्स हाउस, 112-113
गुरुद्वारा रकबगांज रोड,
नई दिल्ली
2. स्टेशन मैनेजर,
नेशनल एवीवेशन कम्पनी ऑफ इण्डिया लि.
इंडियन एयरलाईन्स लिमिटेड, नेहरू प्लॉस,
टोंक रोड, जयपुर

प्रार्थी की ओर से : कोई नहीं –

अप्रार्थी की ओर से : श्री मुनेश चन्द्र शर्मा, —प्रतिनिधि

: अधिनियम :

दिनांक : 13-09-2019

1. प्रार्थी विनोद सिंह शेखावत की ओर से दिनांक 4.7.2012 को औद्योगिक विवाद अधिनियम की धारा 2-ए (जिसे आगे मात्र अधिनियम कहा जावेगा) के प्रावधानों के अन्तर्गत यह दावे का अभिकथन विपक्षीगण के विरुद्ध इस अधिकरण के समक्ष प्रस्तुत किया गया। प्रार्थी का कथन है कि उसकी प्रथम नियुक्ति दिनांक 14.1.2004 को डाक डिस्पेचर के पद पर 2000 रुपये मासिक वेतन पर अप्रार्थी संख्या 2 द्वारा की गई। प्रार्थी ने विपक्षीगण के अधीन दिनांक 2.8.2009 तक लगातार कार्य किया। दिनांक 3.8.2009 को प्रार्थी जब कार्य पर पहुँचा तो उसे कार्य पर नहीं लिया और मौखिक रूप से कहा कि उसकी सेवायें समाप्त कर दी गई। प्रार्थी को कोई लिखित आदेश नहीं दिया और मई 2009 से वेतन का भुगतान भी नहीं किया। प्रार्थी ने 14.1.2004 से 2.8.2009 तक प्रत्येक वर्ष में 240 दिन से अधिक कार्य किया लेकिन सेवासमाप्ति के पूर्व न तो उसे एक माह का नोटिस न ही नोटिस की एवज में एक माह का वेतन और न ही छंटनी प्रतिकर दिया गया। प्रार्थी ने 23.10.2009 को अपने अधिवक्ता के माध्यम से विपक्षीगण को नोटिस भी भिजवाया लेकिन उसका कोई उत्तर नहीं दिया गया। प्रार्थी ने समझौता अधिकारी के समक्ष प्रार्थनापत्र प्रस्तुत कर अनुतोष मांगा। लेकिन विपक्षीगण की हठधर्मिता के कारण समझौता नहीं हुआ। समझौता वार्ता असफल होने के बाद भी श्रम मन्त्रालय द्वारा इस अधिकरण को विवाद संदर्भित नहीं किया गया। अतः सीधे ही यह विवाद/दावा प्रस्तुत किया जा रहा है। विपक्षीगण ने सेवासमाप्ति के पूर्व धारा 25 (एफ) अधिनियम के प्रावधानों की पालना नहीं की है। प्रार्थी दिनांक 3.8.2009 से बेरोजगार है। अतः मौखिक सेवासमाप्ति आदेश दिनांक 3.8.2009 को अवैध घोषित करते हुए निरन्तर एवं विगत परिलाभों सहित प्रार्थी को सेवा में पदस्थापित किया जावें। इस दावे के अभिकथन पर विपक्षीगण को नोटिस जारी किये गये।

2. विपक्षीगण ने दिनांक 29.1.2015 को वादोत्तर प्रस्तुत करते हुए यह कहा है कि विपक्षी कम्पनी ने मैसर्स एयरपोर्ट पोर्टरेज सर्विस एवं मैसर्स रामकरण पोर्टरेज कान्ट्रेक्टर को सहायक कर्मचारी, सफाईवाला एवं ड्राईवर उपलब्ध कराने हेतु ठेका दिया। उक्त ठेकेदार भारत सरकार के अधीन पंजीकृत थे। विपक्षीगण को भारत सरकार के श्रम मन्त्रालय द्वारा संविदा के आधार पर श्रमिकों को नियोजित करने का लाईसेन्स भी दिया गया है। प्रार्थी विनोद सिंह शेखावत इन्हीं ठेकेदार का कर्मचारी है, जिसे ठेकेदार ने विपक्षी के यहां काम करने हेतु भेजा। प्रार्थी और विपक्षीगण के मध्य नियोजक ओर कर्मचारी का सम्बन्ध नहीं है। प्रार्थी को विपक्षीगण ने डाक डिस्पेचर के पद पर दिनांक 14.1.2004 को सेवा में नहीं रखा। इसलिये प्रार्थी विपक्षीगण से कोई अनुतोष पाने का अधिकारी नहीं है। विपक्षीगण ने प्रार्थी को अपनी सेवा से कभी मुक्त नहीं किया क्योंकि वह संविदा श्रमिक था व ठेकेदार द्वारा ही नियोजित था। अतः दावा निरस्त किया जावें।

3. प्रार्थी ने अपनी साक्ष्य में दिनांक 19.4.17 को शपथपत्र प्रस्तुत किया। प्रार्थी को यह निर्देश दिये गये कि दिनांक 5.7.2017 को वह प्रतिपरीक्षा हेतु अधिकरण के समक्ष उपस्थित रहें किंतु याची लगातार अनुपस्थित रहा। दिनांक 8.5.2019 को याची के साक्ष्य में उपस्थित होकर प्रतिपरीक्षा सम्पन्न करवाने हेतु न्यायित में अन्तिम अवसर भी दिया गया और दिनांक 9.9.2019 तिथि नियत की गई। किन्तु दिनांक 9.9.2019 को भी याची अनुपस्थित रहा और उसकी अनुपस्थिति का कोई कारण भी अधिकरण के समक्ष प्रस्तुत नहीं हुआ। लगभग 2 वर्ष और 4 माह की अवधि व्यतीत हो जाने के उपरान्त भी याची से प्रतिपरीक्षा, विपक्षीगण द्वारा नहीं की जा सकी। अन्ततः दिनांक 9.9.2019 को प्रार्थी का साक्ष्य समाप्त कर दिया गया। विपक्षी प्रतिनिधि ने भी इस स्थिति में अपना साक्ष्य प्रस्तुत नहीं करना चाहा। अतः विपक्षी प्रतिनिधि को सुना गया और पत्रावली का अवलोकन किया गया।

4. इस विवाद में प्रार्थी द्वारा स्वयं को प्रतिपरीक्षा हेतु प्रस्तुत न किये जाने के कारण प्रार्थी का साक्ष्य में प्रस्तुत शपथपत्र ग्रहण किये जाने नहीं है। इस शपथपत्र पर विपक्षीगण को प्रार्थी से प्रतिपरीक्षा का अवसर प्रार्थी की लगातार अनुपस्थिति के कारण नहीं मिला। निष्कर्ष रूप में प्रार्थी द्वारा अपने दावे के समर्थन में कोई साक्ष्य प्रस्तुत नहीं किया गया है। साक्ष्य के अभाव में प्रार्थी यह प्रमाणित करने में विफल हो गया है कि विपक्षीगण द्वारा दिनांक 3.8.2009 को उसकी सेवासमाप्ति अधिनियम की धारा 25 (एफ) के प्रावधानों के उल्लंघन में की गई है।

आदेश

5. अतः इस विवाद का अधिनिर्णय इस प्रकार किया जाता है कि दिनांक 3.8.2009 को प्रार्थी की कथित रूप से की गई सेवासमाप्ति विपक्षीगण द्वारा न तो की गई और न ही विपक्षीगण ने अधिनियम की धारा 25 (एफ) के प्रावधानों का उल्लंघन किया। प्रार्थी का विवाद साक्ष्य के अभाव में निरस्त किये जाने योग्य है।

6. अधिनिर्णय तदनुसार पारित किया जाता है।

7. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनाथ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी